TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~275.~~ 82

THE UNITED STATES, APPELLANTS,

vs.

THE HEIRS OF JOHN LYND, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 25, 1869.

10

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1 *Petition.—Filed January 15th*, 1861.

United States district court, eastern district of Louisiana.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 5.

To the honorable the district court of the United States for the eastern district of Louisiana:

The petition of Rose Lynd, the widow of the late Robert C. Cammack, of Robert S. Lynd, and of Henrietta Blanc, the widow of the late John Lynd, deceased, of New Orleans, respectfully shows that they are the heirs or legal representatives of the said John Lynd, who died on the 14th February, 1820, leaving four children, the issue of his marriage with said Henrietta Blanc, to wit, your petitioner's widow Cammack, and Robert S. Lynd, and Henry J. Lynd, and William C. Lynd, who died unmarried and intestate, and whose successions were, under our laws, inherited by your petitioners.

That the right and authority of making grants of land in the provinces of Louisiana and West Florida was, under the Spanish
2 government, vested in the governor of the colony; but that by a decree of the King of Spain of the 22nd October, 1798, this authority was transferred to the intendent of the province, who was the head of the financial department of the government of the colony.

That in the month of July, 1803, before the delivery of the province of Louisiana was made by Spain to France and by France to the United States, the late Thomas Urquhart, then a notable inhabitant of the city of New Orleans, addressed a petition to Juan Ventura Morales, then the intendent of the provinces of Louisiana and West Florida, praying to be permitted to purchase fifty thousand arpents of land in the district of country comprised between the 31st degree of latitude on the north, the Iberville or Amite River on the south, the Mississppi River on the west, and the Perdido River on the east, which district was familiarly known by the name of district of Baton Rouge, and was always considered by the Spanish government as a part of the province of West Florida.

And the said application being of a character, up to that time, un-
3 usual, the said intendant consulted concerning the same all the principal Spanish public officers who then were in the colony, to wit, the commissioners appointed for the transfer of the province of Louisiana, the fiscal of the royal treasury, the lieutenant governor, and auditor of war, all of whom were of opinion that the said application of said Urquhart should be granted on certain conditions for the security of the royal treasury.

That the subject of such sales of land was referred to the King of Spain, who approved of it and directed the said intendant to continue to make such sales.

That among the persons who applied to the said intendant for leave to make purchases of land was said John Lynd, then, and up to his death, an inhabitant of the city of New Orleans.

That he applied, on or about the 26th September, 1803, to purchase, at a just valuation, forty thousand arpents of land.

That on the 1 October, 1803, the said intendant gave an order that forty thousand arpents of the vacant lands of the district of Baton Rouge be surveyed and appraised; and that in pursuance of said order Don

Carlos de Grand-Prè, the commandant of said post, and sub-dele-
4 gate of the general intendancy, and Vicente Sebastian Pintado, surveyor, surveyed thirty-two thousand and twenty-five arpents of land in said district, in eleven different tracts, and made plan whereof; that the said surveys were paid for by said Lynd; that said lands were appraised by four appraisers, two of whom were appointed by the government, and the two others by said

That said lands were appraised a part at ten cents and a part at nine cents an arpent, making together three thousand one hundred and seventy-five dollars six rials and seventeen maravidis, including the half-yearly royal duty, and eighteen per cent. for its remittance to Spain.

That said amount was paid to the royal treasurer on the 2d July, 1806; and that on the 12 July, 1806, the said intendant Morales executed and delivered to said John Lynd a complete title to the said land as a sale made to him by the royal treasury.

That said title was afterwards recorded in the proper public offices, as the whole will more fully appear from said original title and duplicate originals of said plans of survey, which are hereto annexed.

5 That the said eleven tracts of land, composing the said aggregate amount of lands sold, to wit, 32,025 arpents, are described in the process-verbal of survey by Pintado as follows:

Plan No. 1.—3,404 arpents on the west bank of the river St. Helena or Amite, at 21 miles and ¼ in the direction south of the boundary line of the domains of his Majesty, (whom God preserve,) and those of the United States of America, bounded on the north by lands of Don Juan de la Sise, on the south by the lands of the party in interest, (tract No. 2,) on the west by the lands of Don Armand Duplantier, and on the east bounded or terminating by said river Amite.

Plan No. 2.—2,430 arpents on the said west bank of the river Amite, at 23½ miles to the south of said boundary line, bounded on the north by lands of the party in interest, (tract No. 1,) on the south by said lands of Armand Duplantier, on the west by other lands of the party in interest, (tract No. 3,) and on the east bounded or terminating by said river St. Helena or Amite.

Plan No. 3.—3,780 arpents on the east bank of the rivulet St. Rosalie, commonly called Sandy Creek, and at the same distance from the boundary line as the preceding tract, bounded on the north by lands of Armand Duplantier, on the south by other lands of Armand Duplantier and of Don Christoval de Armas, on the east by tract No. 2 of the party in interest, and on the west terminating by said Sandy Creek.

6 Plan No. 4.—310 arpents on the west bank of said Sandy Creek at one mile and a fourth from its junction with the Amite, bounded on the north by lands occupied by Patricis Forbes, on the south by the tract of 12,108 arpents of Don Carlos Ramos, on the west by lands uncultivated, and on the east terminating by said Sandy Creek.

Plan No. 5.—1,035 arpents on the west bank of the river St. Helena or Amite, at 32 miles to the south of the line of division or parallel of 31 degrees, bounded on the upper part by lands occupied by Don Ednardo Ross, on the lower part by lands occupied by Nehemiah Power, on the depth by royal lands, and in front terminating by said river Amite.

Plan No. 6.—5,470 arpents on the west bank of the river Comite, at 12¾ miles of the line which divides the domains of the King from the American territory, bounded on the north by lands surveyed for Don Manuel Garcia, and a tract of 500 arpents conceded to Don Juan Delasize by his excellency Don Manuel Gayoso de Lamos formerly governor,

on the south by lands measured for Don Christoval de Armas, on the east bounded by said river Comite, and on the west by royal possessions.

Plan No. 7.—2,370 arpents in the district of Feliciana, on the left bank of the rivulet "Redwood," (Bosque Roxo,) at 4½ miles to the
7 east of the river Feliciana, and at 13 miles to the N. E. ¼ N. of its junction with the Mississippi, bounded on the N. N. E. side by lands of the party in interest, (tract No. 8,) on the S. S. W. by lands of Don Juan Baptista Labatat and others, surveyed in favor of Don Manuel Garcia, on the W. N. W. by lands of Don Santiago Foster, & almost by those of Don Joseph Bernardo de Olero, and on the side looking to the E. N. E. terminating by said rivulet "Redwood."

Plan No. 8.—836 arpents in the same district, and west bank of Redwood, bounded on the S. S. W. by said mentioned tract No. 7, & lands of Santiago Foster, on the N. N. east by another tract of the party in interest, No. 9, on the N. N. west by royal lands, and on the [on the] side looking to the E. N. east by said mentioned rivulet "Redwood."

Plan No. 9.—670 arpents in said district and west bank of "Redwood," (Bosque Roxo,) at 4 miles to the east of the river Feliciana, and 16 miles to the N. E. ¼ N. of its junction with the Mississippi, bounded on the S. S. west by tract No. 8 of the party in interest, on the N. N. west by lands of don Francisco de Miranda, on the west by royal dominions, and on the east by said "Redwood."

Plan No. 10.—11,100 arpents in the said district of Feliciana, on the east bank of the eastern branch of the river of the name of that
8 district, at 4¼ miles to the south of the 31 degrees boundaries between these domains and the American territory, bounded on the north by lands of Don Manuel de Lanzos, on the south by lands of Santiago Richardson, vacant lands, the rivulet of the Beavers, and lands of Don Juan Tala, on the east by lands of Don Joseph Reynès, and those claimed by G. Smart, on the west by lands of Isabel McFarland and said east branch of the river Feliciana, and in the center by lands of Don Isaac & Don Juan Johnson, Don Pedro de Marigny, and Don Manuel Lejeune; which 11,100 arpents are to be found between the straight & curve lines marked in red on the plan, exclusive of 300 superficial arpents measured previously in the vicinity of point A of the plan in favor of Domingo Loreno, now dead.

Plan No. 11.—670 arpents in said district at 6¾ miles to the east of river Feliciana, and at 6¾ miles of [of] the parallel of 31 degrees, bounded on the north by lands of Don Juan Tala, on the south by lands which are vacant, on the east by lands of Don Joseph Reynès, and on the west by lands claimed by Don Guillermo Stewart, and those
9 conceded to Don Francisco Myranda & Luis Delatt, all of which are clearly and distinctly shown in the plans which precede, in which plans each tract is represented by itself, also the dimensions of the boundaries in lineal perches, the direction of said boundaries by the compass, the declination of which is N. E., the trees and mounds which serve as landmarks, and other natural and artificial limits.

That the territory known to the Spaniards as the district of Baton Rouge, and comprised, as aforesaid, between the 31st degree of latitude and the rivers Iberville or Amite, Mississippi, and Perdido, was always claimed by the Spanish government as a part of the province of West Florida until the treaty of 22 February, 1819, by which both East and West Florida were transferred to the United States.

That the Spanish government had the actual possession and occupancy, and exercised all the powers of government within said territory

until the year 1810, when the inhabitants rose, expelled the Spanish authorities, and formed an independent government.

That already, before said revolution in Baton Rouge, the United
10 States had claimed said territory as being a part of the province of Louisiana, as it had been transferred by Spain to France under the treaty of St. Ildefonso of October 1st, 1800, and by France to the United States under the treaty of cession of Louisiana of the 30th April, 1803; but the United States never attempted to take forcible possession of said territory; and even when the Spanish government had been expelled by the inhabitants, and when President Madison, by his proclamation of the 16th October, 1810, directed that possession should be taken of said territory for the United States, he still declared that the right to the sovereignty over said territory should continue to remain a subject of amicable diplomatic negotiations with Spain.

That afterwards, on the 25th April, 1814, an act of Congress was passed, entitled "An act to ascertain the titles and claims to land in that part of Louisiana which lies east of the river Mississippi and island of New Orleans;" and that, in compliance with said act, the said
11 John Lynd submitted his claim to the aforesaid 32,025 arpents of land to the commissioner for the district west of Pearl River; and that the said commissioner reported thereon that the said claim was not entitled to confirmation because the territory within which the same was situated was a part of Louisiana, ceded to the United States by the treaty with France of April 30th, 1803, and that the authority of the government of Spain over said territory had ceased by the treaty of San Ildefonso of October 1st, 1800.

That where claims of this class were afterwards submitted to the Supreme Court of the United States, the said court held that the sovereignty over said territory was a political, and not a judicial, question; that it had been decided by the political department of the government in the sense that said territory was embraced in the cession from Spain to France, and from France to the United States; that the courts had no authority to review or annul this decision; and that, although the United States had bound themselves to respect and
12 confirm all grants made by the Spanish authorities in East and West Florida by the 8th article of the treaty with Spain of February 22nd, 1819, by which Florida was ceded to the United States, yet this required further legislation by Congress before the validity of such grants as the one herein described could be recognized by the courts.

That your petitioners, and those under whom they hold, believing that the act of Congress of June 17th, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude, and between the Mississippi and Perdido Rivers," was applicable to claims of the above description, filed a petition in the district court of the United States for the eastern district of Louisiana on the 16th June, 1846, praying for the recognition of their aforesaid title.

That the said district court decided in their favor, but on ap-
13 peal by the United States to the Supreme Court of the United States, the said Supreme Court reversed said decision, and held that said act of June 17th, 1844, did not apply to complete grants of this description.

That, however, on the 22nd June, 1860, Congress passed a bill entitled "An act for the final adjustment of land claims in the States of Florida, Louisiana, and Missouri, and for other purposes," under which persons

holding land claims in said States by grant, concession, &c., emanating from any foreign government during the period when any such government claimed sovereignty, or had the actual possession of the district or territory in which the lands so claimed are situated, were authorized to submit their claims for adjudication to boards of commissioners; and by the 11th section of said act persons holding such land claims, "when such title was created and perfected during the period while the foreign government from which it emanated claimed sovereignty over or had actual possession of such territory," were permitted to submit
14 their claims to the district courts of the United States; and that act of Congress thus impliedly recognizes the validity of claims presenting the circumstances which have been shown to attend the aforesaid described claim of your petitioners.

Your petitioners submit, in accordance with the first section of this act, a sworn statement of the tracts of land as shown by the public surveys of the United States, which are covered by the aforesaid claims of your petitioners, according to a general plan showing the position of each of said tracts of land, and which petitioners hereto annex as part hereof.

Wherefore they pray that the United States be cited by the district attorney for the eastern district of Louisiana to answer this petition; that after due proceedings the titles of your petitioners to the above-described eleven tracts of land, containing altogether 32,025 su-
15 perficial arpents, may be declared valid and binding upon the United States; that a patent may be ordered in favor of your petitioners for so much of said lands as remain unsold; and that for so much of said lands as may have been sold your petitioners may be declared to have the right to enter upon any of the public lands of the United States a quantity of land equal in extent to that sold by the government. And your petitioners pray for general relief and for their costs.

JANIN & GRIFFON,
Attorneys for Plaintiffs.

R. Lynd, the widow of the late R. C. Cammack, being duly sworn, deposes that the facts stated in the foregoing petition of her own knowledge are true, and those stated upon information received from others she believes to be true.

ROSE CAMMACK.

16 Sworn to and subscribed before me, New Orleans, 27th December, 1860.

ARTHUR LANCIER, *J. P.*

We are security for the costs of this suit.

JANIN & GRIFFON.

Citation.

U. S. district court.

HEIRS OF JOHN LYND } No. 5.
vs.
THE UNITED STATES. }

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

You are hereby commanded to summon Henry C. Miller, esq., U. S.

attorney for said district, to defend the United States against the demand contained in the petition, of which a copy accompanies
17 this citation, or to deliver his answer to the same in the office of the clerk of the district court of the United States in and for the eastern district of Louisiana, in the city of New Orleans, within ten days after the service hereof, or judgement will be rendered against said defendants by default; which delay is increased one day for every ten miles that the defendants' residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the 3d Monday of January, 1861.

Witness the Honorable Theo. H. McCaleb, judge of the said district court of the United States of America, at the city of New Orleans, this 16th day of January, A. D. one thousand eight hundred and sixty-one, and of the independence of the United States of America the 85th year.

N. B. JENNINGS, *Clerk*,
By ROB'T M. LUSHER, *D'y Clerk.*

18 *Marshall's return.*

Received this 16th day of Jan'y, 1861, and on the 17th day of Jan'y, 1861, served copies of the within citation, plaintiffs' petition, on the within-named H'y C. Miller, esq., U. S. attorney for the eastern district of La., in the manner following, to wit: by handing it to him in person.

R. A. HUNTER, *Marshall.*

Supplemental & amended petition.—Filed April 19th, 1869.

To the hbl. district court of the United States for the district of Louisiana:

The supplemental and amended petition of Rose Lynd, the widow of Robert C. Cammack, of Robert S. Lynd, and of Henrietta Blanc,
19 the widow of the late John Lynd, all residing in New Orleans, respectfully shows:

That on the 15th of January, 1861, your petitioners filed in the hbl. district court of the United States for the eastern district of Louisiana, of which this hbl. court is the successor, a petition praying for the confirmation of the title to 32,025 arpents of land, lying in that part of the former Spanish province of West Florida which is now a part of the State of Louisiana.

That said proceedings being instituted under the provisions of an act of Congress, of the 22d of June, entitled "An act for the final adjustment of land claims in the States of Louisiana, Florida, & Missouri," your petitioners filed with said petition, and in compliance with the first section of the aforesaid act, a "sworn statement of the tracts of land, as shown by the public surveys of the United States, which are covered by the aforesaid claims of your petitioners, together with a general
20 plan showing the locality of each of the aforesaid eleven tracts of land, as will be seen by reference to the aforesaid petition, which was sworn to by one of your petitioners.

Your petitioners show that owing to the cessation of the existence of said court during the late civil war, and owing to the occupation of the building where said court was held, and its records were kept, by military officials, after the capture of the city of New Orleans, or owing to some other cause unknown to the petitioners, the aforesaid statement and plan can no longer be found among the records of said former court,

which are now in the keeping of this hbl. court, although the petitioners have caused diligent search to be made for the same.

Your petitioners further show that they have accordingly procured new plans to be made, which are now filed in the record of this case, designated as plans B, C, D, E, & F, and referred to in the depo-
21 sition of Wm. J. McCulloch heretofore taken contradictorily with the district attorney of the United States, and that the said five plans represent the eleven tracts of land sold by Intendant Morales to John Lynd, as stated in the original petition; that they also show the divisions and sub-divisions of said lands as they appear in the surveys made by the United States.

Your petitioners also array the sworn statement required by the 6th section of the said act of June 22, 1860, showing what portions of the lands surveyed by the United States in said district are covered by the aforesaid claims of your petitioners.

Your petitioners show that, from the said statement and the said plans, it appears that no part of the land embraced in the said claims of the petitioners is vacant according to the surveys of the United States, and that there is not within the boundaries of said claim any land that
22 can be surveyed or located for the petitioners, the United States having granted titles for the whole of it to other parties, and that therefore your petitioners are entitled to certificates of location for the whole amount of acres comprised in said claims.

And whereas the thirty-two thousand and twenty-five arpents embraced in said claims of the petitioners amount to twenty-seven thousand two hundred and fifty-three $\frac{75}{100}$ acres, your petitioners pray that their title to the aforesaid eleven tracts of land be declared valid, and that they, the petitioner, be declared to have the right to enter upon any of the public lands of the United States subject to private entry the quantity of twenty-seven thousand two hundred and fifty-three $\frac{75}{100}$ acres, according to the 6th section of the aforesaid act of June 22d, 1860.

MILES TAYLOR,
Att'y for Petitioners.

Let this supplemental & amended petition be filed.
Ap'l 19, 1869.

E. H. DURELL, *Judge.*

23 *Affidavit as to the land covered by the claim of plaintiffs, according to legal division & subdivision, &c.—Filed Ap'l 22, '69.*

United States district court for the eastern district of Louisiana.

THE HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 5, new land docket.

Rose Lynd, widow of Robert C. Cammack, deceased, being duly sworn, deposes and says that she is a resident of the city of New Orleans, and one of the plaintiffs in the above-entitled cause; that to the best of her knowledge and belief the maps filed in the said suit and marked respectively B, C, D, E, and F, correctly represent the legal divisions and subdivisions of the surveys made by the United States
24 upon the lands covered by the claim of the petitioners; that said legal divisions and subdivisions are indicated by the black lines on said maps; that the lines, marks, and figures in red ink on said

maps correctly describe the claim of the petitioners as surveyed by the surveyor general of the Spanish government for the province of West Florida, Vincente Sebastian Pintado, in eleven tracts; and that, to the best of her knowledge and belief, the whole of said land has been disposed of by the United States government either by sale, donation, or otherwise.

ROSE CAMMACK.

CITY OF NEW ORLEANS, *State of Louisiana:*

Sworn & subscribed to before me, the undersigned competent authority, this 13th April, A. D. 1869.

OCTAVE DE ARMAS, *Not. Pub.*

[5c. rev. stamp.]

25 *Answer to petition & supplemental petition.—Filed April* 22, 1869.

In district court of the United States for the district of La.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 5.

The answer of the United States, the defendants in the above-named suit, respectfully shows that they deny all and singular the facts and allegations in plaintiffs' petition and supplemental and amended petition contained.

Wherefore they pray that they may be hence dismissed, and that plaintiffs be condemned to pay all costs.

P. H. MORGAN, *U. S. Att'y.*

26 *Replication.—Filed May* 14*th*, 1869.

U. S. district court, district of Louisiana.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 5.

The replication of Rose Lynd, widow of Robert C. Cammack, of Robert S. Lynd, & of Henrietta Blanc, widow of the late John Lynd, petitioners, to the answer of defendants.

These replicants, saving unto themselves all and all manner of advantages & exceptions to the manifold insufficiency of the said answer, for replication thereunto say that they will aver & prove their said petition or bill to be true, certain, & sufficient to be answered unto, and
27 that said answer of the defendants is uncertain, untrue, & insufficient to be replied unto, by these replicants; without that, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto & herein not replied unto, confessed & avoided, traversed or denied, is true, all which matters & things these replicants are & will be ready to aver & prove as this honorable court shall award; & humbly, as in & by their said petition or bill they have already prayed.

LOUIS JANIN,
MILES TAYLOR, *Solicitors.*

28 UNITED STATES }
vs.
HEIRS OF LYND. }

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

United States district court, sitting in chancery.

THE HEIRS OF JOHN LYND }
vs. } Land cause No. 120.
THE UNITED STATES. }

Be it remembered that heretofore, at the May term (A. D. 1846) of the said court, to wit, on the sixteenth day of June of said year, the heirs of John Lynd, plaintiffs in the above entitled-cause, came, by their
29 attorneys, Mess. Elmore & King, into the office of the clerk of said court, and there filed their petition; which is in the words and figures following, viz:

Petition.—Filed June 16th, 1846.

To the honorable the district court of the United States for the district of Louisiana:

The petition of Henry I. Lynd, Robert S. Lynd, William C. Lynd, and Rose Lynd, wife of R. C. Cammack, herein duly authorized by her said husband, who all reside in the State of Louisiana, respectfully represent that they are the heirs and legal representatives of John Lynd, deceased, who departed this life about the day of

Petitioners allege that on or about the 28th day of September,
30 1803 A. D., the said John Lynd, upon his application for the purpose, obtained from Juan Ventura Morales, the intendent of the province of Louisiana and West Florida under the government of Spain, an order of survey for the purchase of a large quantity of land which then belonged to the government of Spain.

That under the said order of survey, and with the view of purchasing the said land from the Spanish government in conformity with the laws and usages of that government, he expended large sums of money and much labor in having the said surveys made.

That after granting the said order of survey and inducing the said Lind to expend large sums in making the surveys with the view of purchasing the land, the government of Spain was bound, in good
31 faith, as well as by the laws and usages of that government, to have made a title to the said Lind upon his complying with the legal requisitions of that government for the sale of the public land.

Petitioners allege that the said Lynd did, within a reasonable time, comply with all the legal requisitions for the sale of the public land of that government, and that accordingly, on the 12th day of July, 1806, the said Juan Ventura Morales, the duly authorized officer and agent of the government of Spain for the sale and disposition of the public lands in the then provinces of Louisiana and West Florida, did, at Pensacola, a place within his jurisdiction, bargain, sell, and convey to the said Lynd the following hereinafter-described tracts or parcels of land, to
32 have and to hold the same to himself and his heirs, forever, for and in consideration of the sum of three thousand one hundred and seventy-five & $\frac{75}{100}$ dollars.

The said land was surveyed by Vicente Sebastian Pintado, the duly authorized surveyor of the Spanish government in the province of West Florida, who executed and returned the plans hereunto annexed, as more fully appears from his report accompanying the said plans, which is also annexed.

The following is a description of the land conveyed as above mentioned to the said Lynd, to wit, on the plan No. 1748, hereunto annexed, three separate lots or parcels:

Lot number one, containing three thousand four hundred and
33 forty arpents, situated in the district of Baton Rouge, in said province of West Florida, on the west side of the river St. Helena or Amite, about twenty-one and one-third miles between the then boundary between the territory of the United States of America and the dominions of his Majesty the King of Spain, the said tract being, at the date of the survey, bounded on the north by lands of Don Juan de Lassie, on the south by lot or tract number two granted to the said John Lynd, on the west by lands of Don Armando Duplantier, and on the east by the river St. Helena or Amite.

Lot number two, on the same plan, bounded on the north by the aforesaid lot number one, on the south by lands belonging to Duplantier, on the west by lot number three on the same plan, belonging to said
34 Lynd, and on the east by the river St. Helena or Amit; said lot or tract contains two thousand four hundred and thirty arpents.

Lot number three of the same plan, containing three thousand seven hundred and eighty arpents, bounded on the north by lands of Duplantier, on the south by other lands of Duplantier and C. de Arinas, on the east by other lands of said Lynd, to wit, lot number two of the same plan, and on the west by Sandy Creek.

Two other lots, as per plan number 1749, executed by the same surveyor, in the same district, also hereunto annexed, to wit:

Lot number four, containing about three hundred and ten arpents, on the west side of Sandy Creek, at about one and one-fourth miles
35 from its confluence with the river Amite, bounded on the north by lands of P. Forbes, on the south by lands of Carlos Ramos, west by public lands of the then government of Spain, and on the east by Sandy Creek.

The other lot on said plan, to wit:

Lot number five, containing about one thousand and thirty-five arpents, on the west side of the river Amite, about thirty-two miles south of the parallel of thirty-one degrees of north latitude, bounded on the upper side by lands of Don Edward Ross, on the lower side by lands of U. Power, at the bottom by the public domain, and terminated in front by the river Amite.

One other lot, as per plan number 1750, executed by the same surveyor, and in the same district, also hereunto annexed, to wit:

36 Lot number six, containing about five thousand four hundred and seventy arpents, on the west side of the river Comite, at the distance of twelve and three-fourth miles from the then boundary between the territories of the United States and the dominions of the King of Spain, bounded on the north by the lands of Don Manuel Garcia and Juan de Lasize, south by lands of C. de Arinas, on the east by the river Comite, and on the west by royal lands of the government of Spain.

Three other lots or tracts of land, as per plan number 1751, executed by the same surveyor, in the same district, also hereunto annexed, to wit:

Lot number seven, containing two thousand three hundred and sev-

enty arpents, situated in Feliciana, on the west bank of the arroyo
37 del Bosque Roxo, (or Redwood Creek,) about four and one-half miles east of the river Feliciana, and about thirteen miles north-east one-quarter north from its confluence with the river Mississippi, bounded on the north-northeast by another lot of land belonging to said Lynd, and of the same plan number eight, on the south-southeast by lands of Don Juan Bautista Labatut, & of Manuel Garcia, on the north-northeast by lands of James Foster, and on the east-northeast by the arroyo del Bosque Roxo.

Lot number eight of the same plan, containing eight hundred and thirty-six arpents, bounded on the south-southwest by lot number seven of the same plan belonging to said Lynd, and by lands of James Foster, on the north-northeast by another lot belonging to the said Lynd,
38 number nine of the plan, on the west-northwest by royal lands, and on the east-northeast by the arroyo del Bosque Roxo.

Lot number nine of the same plan, containing about six hundred and twenty arpents, bounded on the south-southwest by lot number eight on the same plan belonging to the said Lynd, on the north-northwest by lands of Francisco Miranda, on the west by royal lands, and on the east by the arroyo del Bosque Roxo.

Two other tracts as per plan number 1752, executed by the same surveyor, in the same district, also hereunto annexed, to wit:

Lot number one, containing about eleven thousand one hundred arpents, in Feliciana, on the east side of the east branch of the
39 river Feliciana, about four and one-fourth miles south of the thirty-first degree of north latitude, bounded on the north by lands of Manuel de Laiszas, on the south by lands of James Richardson, vacant lands, and the arroyo de las Castros, and the lands of Juan Fala, on the east by lands of Joseph Reynes and William Stewart, on the west by those of Isabel McFarlane and the east branch of the river Feliciana, and on the centre by lands of Isaac Johnson, Juan Johnson, Pedro Marigny, and David Lejeune.

Lot number two, containing six hundred and seventy arpents, in New Feliciana, bounded north by lands of Juan Fala, south by vacant lands, east by lands of Joseph Reynes, and west by lands of William Stewart, Francisco Miranda, and Louis Delata.

All the foregoing descriptions are referred to the date of the sur-
40 vey.

The foregoing facts and descriptions will more fully appear from a reference to the accompanying plans and report of the surveyor, and to the title issued to the said Lynd by the said Morales, which are hereunto annexed.

Petitioners allege that said claim to the above-described land was presented by the said John Lynd for confirmation to James O. Cosby, the commissioner of land claims for the United States, as will appear from the report thereon in the 18th volume American State Papers, pages 58 & 66.

Petitioners allege that at the date of the above-mentioned surveys and sale to the said John Lynd, he was a resident of the province of Louisiana, and continued to be so until the time of his decease.

41 Petitioners further allege that the contract for the sale of the above-described land, and the order of survey for the same, were legally made and issued by the proper authorities under the Spanish government, at the date before stated and set forth in the annexed documents; that the rights of the said Lynd were protected by the treaty between the United States of America and the French republic, of the 30th day of April, 1803; and that the said rights of said Lynd

might have been perfected into a complete title, under and in conformity to the laws, usages, and customs of the government of Spain, under which the same originated, had not the sovereignty of the country been transferred to the United States.

Petitioners further allege that the rights of the said Lynd were
42 perfected by a full and complete title granted to him by the duly authorized officers of the government of Spain, as appears from the annexed documents; that at the date of said title the said authorities had the right to dispose of the land therein granted, and the government of the United States is bound, by treaties with Spain and France, to protect the rights of the said Lynd under his said title.

Petitioners allege that, in virtue of the premises, they are justly entitled to the land above described, but that always heretofore the United States government has refused to recognize the validity of said title.

43 Wherefore petitioners pray this honorable court to enquire into the validity of said claim or title.

Petitioners allege that they have been informed that the following persons have set up some sort of claim to portions of said land, to wit: John McQueen, Wesley Waddell, Thomas W. Scott, J. W. Hackney, David Thomas, Samuel McMannis, Beverly Dunn, John Carr, Wily Ingram.

Petitioners allege that they do not know what other persons may have claims to the land, or whether all of the above persons intend setting up claims to the land, or any portions thereof.

Wherefore they pray that they may be allowed to amend this their petition, if any further information is obtained in reference to the above parties, or to those who may set up claims to the land.

44 They further pray that the above parties be cited to appear and answer this petition, and that the United States of America be cited through the district attorney of the United States, and that, after all due legal proceedings had, the petitioners be decreed to be entitled to the land above described, and their title to the same pronounced valid; and that if it should so happen that the land, tenements, or hereditaments decreed to the petitioners shall have been sold by the United States or otherwise disposed of, the petitioners be allowed to enter a like quantity of the public lands, as provided by the eleventh section of the act of Congress approved May 26th, 1824, and for all other relief in the premises, &c.

(Signed) ELMORE AND KING,
45 *Solicitors for Petitioners.*

I hereby authorize my wife to appear in the foregoing suit.
(Signed) R. C. CAMMACK.

William C. Lynd, being duly sworn, declares that all the facts set forth in the foregoing petition are true, to the best of his knowledge and belief.
(Signed) W. C. LYND.

Sworn to and subscribed before me this 16th day of June, 1846.
(Signed) N. R. JENNINGS, *Clk.*

NOTA.—For Document "A," annexed to the foregoing petition, see page 15 of this transcript.

And thereupon, at the same term and on the same day, to wit, the 16th of June, A. D. 1846, was issued from the clerk's office the following:

Citation.

46 United States district court sitting in and for the district of Louisiana.

To the marshal for the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon S. W. Downs, esquire, United States attorney, to appear before the honorable judge of the district court of the United States sitting in and for the district of Louisiana, at a district court to be holden at New Orleans on the first Monday in July, 1846, then and there to answer a petition in chancery filed against the United States, wherein the heirs of John Lynd are petitioners.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

47 MEM.—The defendant is to enter an appearance in this cause in the clerk's office on or before the first Monday of July, 1846, otherwise the petition may be taken pro confesso.

Witness the Hon. T. H. McCaleb, judge, this sixteenth day of June, New Orleans, 1846, and 70th year of American independence.

[SEAL.] (Signed) L. E. SIMONDS,
Dep. Clerk.

On which was duly registered in the clerk's office the following:

Marshal's return.

Received this 16th day of June, 1846, and on the same day served copies of the within citation, plaintiffs' petition, and documents annexed on the within-named S. W. Downs, esquire, United States
48 attorney, in the manner following, to wit: by leaving the same in his office in New Orleans, in the hands of Mr. Alfred Perilliat, a white person over fourteen years of age, and employed in said office, said attorney being at the time absent.

Returned 17 June, 1846.

(Signed) W. T. WAGNER,
U. S. Marshal.

And afterwards, at the same term, to wit, on the eleventh day of November, A. D. 1846, appeared the defendants, by their attorney, and filed the following:

Answer.

In the district court of the United States for the district of Louisiana.

HEIRS OF LIND
vs.
THE UNITED STATES.

49 The answer of the United States, defendants in the above-

named cause, respectfully shows that they deny all and singular the facts and allegations in plaintiffs' petitions contained.

Wherefore they pray that they be hence dismissed, and that plaintiffs be condemned to pay all costs.

(Signed) THOS. J. DURANT,
Att'y U. S.

Nov. 11, '46.

And thereafter, at the February (term A. D. 1847) of said court, to wit, on the seventeenth day of February, of said year, copies of the hereinbefore copied petition of plaintiffs were issued from the clerk's office for service on various adverse claimants.

Whereupon, on the 20th April, 1847, was made the following:

Marshal's return.

50 On the 10th of March, 1847, served copies of the within petition on Thomas W. Scott, Samuel McMannus, and John Carr, all in person, and on David Thomas, by handing the same to his wife, Mrs. Thomas, a white person over 14 years of age, at his domicil, said Thomas being absent, all in the parish of East Feliciana. After diligent search and enquiry, John McQueen, Westly Waddell, S. W. Hackney, and Beverly Dunn could not be found.

Returned 20 April, 1847.

(Signed) W. T. WAGNER,
U. S. Marshal.

And further, at the same term, to wit, on the eighth day of April, A. D. 1847, the plaintiffs filed in the clerk's office the following:

Replication.

51 To the hon. the district court of the United States in and for the eastern district of Louisiana:

The replication of Henry I. Lynd, Robert S. Lynd, William C. Lynd, and Rose Lynd, wife of R. C. Cammack, to the answer of the United States, filed by the district attorney thereof, in the suit pending in this hon. court between the said replicants and the United States and others.

These replicants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replicating thereunto, say that they will aver and prove their said bill to be true, certain, & sufficient in the law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any matter or thing whatsoever in said answer contained, mate-
52 rial or effectual in law, to be replied unto, confessed and advised, traversed or denied, is true, all of which matters, &c., & things, these repliants are and will be ready to aver and prove as this hon. court shall direct; and humbly pray as by their said bill they have already prayed, &c.

(Signed) ELMORE & KING,
Solicitors for Complainants.

And further, on the same day, to wit, (February term, 1847,) Thursday, April 8th, 1847, was entered of record on the minutes of the court the following:

Order.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 120.

53 Upon motion of Elmore and King, of counsel for the petitioners, it is ordered that the said cause be fixed for trial for Wednesday, the 21 inst., at 10 a. m., and that the district attorney be notified thereof.

Wherefore, at the same term, to wit, on the said Wednesday, April 21, 1849, was entered of record on the minutes of the court the following:

Trial and submission.

THE HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } 120.

This cause, fixed to-day for trial, was called. W. W. King, of counsel for the plaintiffs, and district attorney for defendents, appeared. The
54 testimony taken before the commissioner, on behalf of the plaintiffs, was read to the court, and, after argument of counsel at length, the cause was submitted.

It being, as appears from the docket, first "ordered by the court, on motion of the plaintiffs' counsel, that a discontinuance be entered up as against Wiley Ingram, one of the parties named in plaintiffs' petition."

And be it remembered that the documents this day offered in evidence by the plaintiffs, and submitted to the court, are the following, viz:

First. Document "A," filed with and annexed to plaintiffs' petition on the 16th June, 1846, which document bears the endorsement, viz:

Louisiana.—Recorded in the office of the clerk to the commis-
55 sioner of land claims west of Pearl River, and east of the Mississippi, in lib. No. 3, vol. 152.

CHARLES S. COSLY, *Clerk.*

And the following title, viz:

Año de 1806.

Titulo de 32,025 arpanes de tierra que por compra ha obtenido D'n Juan Lind en los distritos de Baton Rouge y na, Feliciana con cinco planos figurativos, desde el No. 1748 hasta 1752 y la correspondiente explication del agrimensor R'l D'n Vicente Sebastian Pintado."

And is in the words and figures following, viz.:

(For maps see original pages 16, 17, 18, 19, & 20.) These 5 maps are found at pages 359, 360, 361, 362, & 363 of this transcript.

Don Vicente Sebastian Pintado, capitan de cavalla de milicias
56 y segundo agrimensor de esta provincia:

Certifico: que han sido medidos y lindados a favor de D'n Juan

Lynd onze terrenos, componiendo sumos treinta y dos mil y veinte y cinco arpanes planos, medidos a la percha lineal de la ciudad de Paris de diez y ocho pies de la misma ciudad, contando, cien perchas, planas por arpan segun costumbre agraria de esta provincia, y conforme a los onze planos que anteceden; cuyas situaciones, linderos y numero de arpanes planos de cada terreno de por se, es como sigue:

Plano No. 1. Tres mil quatro cientos y quatro arpanes en la margen occidental del Rio de Sta. Helena ó Amit, a veinte y una millas y tercio, cortas, al sur de la linea de limites entre estos dominios de S.
57 M. (que Dios gu'e) y los Estados Unidos de la America lindando por la parte septentrional, con tierras de D'n Juan Delassize, por la meridional con otras del interesado (terreno No. 2) por la occidental con las de D'n Armando Duplantier y por la oriental confina o se termina en el antedicho Rio Amit.

Plano No. 2. Dos mil quatro cientos y treinta arpanes en la misma margen occidental del Rio Amit, a veinte y tres millas y media al sur de la antedicha linea de limites lindando por la parte arctica, con tierras del interesado, terreno No. 1 por la antarctica, con otras de D'n Armando Duplantier, por el poniente con otras del misma interesado terreno No. 3 y por el levante confina con el antedicho Rio de Sta. Helena ó Amit.

58 Plano No. 3. Tres mil setecientos y ochenta arpanes planos en la margen oriental del arroyo de Sta. Rosalia, vulgarmente llamado Sandy Creek y a la misma dista de la linea de limites que el antecédente, lindando por la parte del Norte, con tierras del citado D'n Armando Duplantier, por la del sur con otras del mismo Duplantier y de D'n Christoval de Armas, por la del este con el terreno No. 2, del interesado y por la del veste termina en el citado arroyo Sandy Creek.

Plano No. 4. Tres cientos y diez arpanes en la margen occidental del referido arroyo de Sta. Rosalia ó Sandy Creek a una milla y quarto de su confluencia con el Amit lindando por la parte boreal con tierras ocupadas por Patricio Forbes, por la austral con el terreno de doze
59 mil ciento y ocho arpanes de D'n Carlos Ramos por la occidental con tierras valdias, y por la oriental se termina en el antedicho arroyo Sandy Creek.

Plano No. 5. Un mil treinta y cinco arpanes en la margen occidental del Rio de Sta. Helena ó Amit a treinta y dos millas al sur de la linea divisoria o paralela de treinta y un grados, lindado por la parte de arriba, con tierras ocupadas por D'n Edouardo Ross, por la de abaxo con las ocupadas por Nehemias Power, por el fondo con tierras realargas y por el frente se termina en la orilla del anted'ho Rio Amit.

Plano No. 6. Cinco mil quatro cientos y setenta arpanes en la margen occidental del Rio Comit, a doze millas y tres quartos de la linea
60 que separa estos dominios del Rey del territorio americano, lindando por la parte del Norte con tierras apeadas para D'n Manuel Garcia y un terreno de quinientos arpanes concedidos a D'n Juan Delassize por el S'or D'n Manuel Gayoso de Lemos, gobernador gen'l que fué; por la del sur con tierras medidas a favor de D'n Christoval de Armas, por la del este confina con el antedicho Comit y por el veste linda con tierras realengas.

Plano No. 7. Dos mil tres cientos y setenta arpanes en el distrito de la Feliciana en la margen occidental del arroyo del Bosque Roxo a quatro y media millas al este del Rio Feliciana y a trece millas al N. E. ¼ N. de su confluencia con el Mississippi, lindando por la parte de N. N. E. con otro terreno del interesado, No. 8, por el S. S. O. con tier-

61 ras de D'n Juan B'ta Labatut y otras apeadas a favor de D'n M'l Garcia; por el O. N. O. con tierras de Santiago Foster y casi con las de D'n Joseph Bernardo de Heria y por la parte que mira al E. N. E. se termina en el antedicho arroyo del Bosque Roxo.

Plano No. 8. Ocho cientos treinta y seis arpanes en el mismo distrito y margen occidental del Bosque Roxo, lindando por la parte del S. S. O. con el anted'ho terreno No. 7, y con tierras de Santiago Foster, por la del N. N. E. con otro terreno del interesado No. 9 por la del O. N. O. con tierras realengas y por la parte que mira al E. N. E. con el anted'ho, arroyo del Bosque Roxo.

Plano No. 9. Seis cientos veinte arpanes en el referido distrito y d'ho margen occidental del Bosque Roxo, a quatro millas al este del
62 Rio Feliciana y a diez y seis millas al N. E. ¼ N., de su confluencia con el Mississippi, lindando por la parte del S. S. O. con el No. 8, del interesado por el N. N. O. con tierras de D'n Francisco Miranda, por el oeste con el anted'ho arroyo del Bosque Roxo.

Plano No. 10. Onze mil y cien arpanes en el citado distrito de la Feliciana, en la margen oriental, del brazo del este del rio del mismo nombre del distrito a quatro millas y quarto, cortas, al sur de los treinta y un grados, limites entre estos dominios y el territorio americano, lindando por la parte del norte con tierras de D'n Manuel de Lanzos, por la del sur con tierras de D'n Santiago Richardson, tierras vacantes, el arroyo de los Castores y tierras de D'n Juan Tala, por el
63 este con tierras de D'n Joseph Reynes, y con las reclamadas por Guillermo Stuart, por el oeste con las de Isabel McFarland y con el anted'ho brazo del este del Rio Feliciana; y por el centro con tierras de D'n Isaac y D'n Juan Johnson, D'n Pedro Marigny y D'n David Lejeune; cuyos onze mil y cien arpanes planos, se hallan contenidos entre las lineas rectas y curbas, marcadas con color roxo en el plano, exclusivo de tres cientos arpanes planos medidos anteriormente en las cercanias del punto (A) del plano a favor de Domingo Lonero, ahora difunto.

Plano No. 11. Seis cientos setenta arpanes en el anted'ho distrito a seis millas y tres quartos al este del Rio Feliciana y a seis millas y tres cuartos al sur del paralelo de treinta y uno grados, lindando por el norte con tierras de D'n Juan Tala; por el sur con otras vacantes, por el este con las de D'n Joseph Reynes, y por el oeste con las
64 reclamadas por Guill'o Stuart y las concedidas a D'n Francisco Miranda y a Luis Delatt. Todo lo que manifestan clara y distintamente los planos, que anteceden, en los que cada terreno de por si va figurado, con mas las dimensiones de sus lados anotadas en perchas lineales, las direcciones de sus limites segun la brujula, la declinacion N. E. de esta, los arboles y mojones que sirven de linderos y los demas confines naturales y artificiales.

Los treinta y dos mil y veinte y cinco arpanes, son parte de los cuaranta mil que solicita comprar de la r'l hacienda el interesado y que fueron mandados medir y estimar, por anto del s'or intendente general de veinte y ocho de Septiembre, ultimo segun parece del despacho de primero, de Octubre siguiente librado, a este fin, al S'or D'n Car-
65 los de Grand-Pré, coronel de los reales ejercitos, gobernador politico y militar de estos puestos y subdelegado de la intenda g'ral; y de los que solicitó Don Samuel Fulton, apoderado del interesado; se le despachasen las correspondientes diligencias para obtener los titulos in forma, interin el tiempo dá lugar de deslindar y apear los siete mil nove cientos y sesenta y cinco arpanes restantes, para el completo de los quarenta mil. Y habiendo nombrado dicho s'or gobernador y sub-

delegado, a D'n Pedro Allain y D'n Felix Bernardo Dumoutier por peritos estimadores, por lo respectivo a la r'l hacienda; y el apoderado de la parte, nombrado por la suya a D'n Phélipe Hicky y a D'n Bernardo Dubroca, y por haverse ausentado D'n Phelipe substituyó a su padre D'n Dan'l Hickey quienes juntos y con la asistencia de los testigos Luis Delatt y Juan Poiret procedieron a la estimacion que hicie-
66 ron en la forma sig'te.

Los veinte mil dos cientos y cinqta, y cinco arpanes contenidos en los planos desde No. 1 hasta No. 9, inclusivos, a razon de diez sueldos por cada arpan plano, y los onze mil sete cientos y setenta contenidos en los planos No. 1 y No. 11, a razon de nueve sueldos por cada arpan plano, formando todo junto la suma de tres mil ochenta y cuatro pesos seis reales y medio, con corta difua; los que visto por el antedicho apoderado D'n Samuel Fulton, se conformó y recivio compradas d'has tierras en la forma que va dicha y de ellas se dió por entregado y satisf'ho a toda su voluntad, y lo firmó con los estimadores y testigos en Baton Rouge a quinze dias del mes de Marzo de mil ocho cientos y quatro años.

67 (Nota.) En la diligencia de apeo del terreno de doze mil ciento y ocho arpanes de D'n Carlos Ramos se dice lindan este, por la parte septentrional con tierras ocupadas por Patricio Forbes; y en esta hablando del terreno No. 4 se dice que est linda tambien por la misma parte con tierras ocupadas por el mismo Forbes. La razon es que en el primero caso Forbes receamaba hasta alli; y en el segundo que haviendo hallado, que era mas tierra de que, segun su familia pudiera tocarle, se estrecho espacio que pretendia, Vicente Sebas'n Pintado, Sam'l Fulton, Phelipe Hicky, Bernardo Dubroca, Felix Bernardo Dumoutier, Pedro Allain, Juan Poset, Luis Delatt.

D'n Vicente Sebastian Pintado, actual agrimensor g'ral de Florida occidental.

Certifico: que los planos y diligencias de apeo y estimac'n que
68 anteceden son conformes a los documentos originales anexos al espediente del asunto, y que se hallan registrados en el lib. VI, de apeos desde fol. 8 hasta 14, inclusivos; y en conformidad de anto del S'r D'n Juan Ventura Morales, intend'te g'ral, interino de esta provincia y subdelegado de la superintend'a g'ral, de tres del corriente, doy la presente copia para agregar del titulo en forma. En la plaza de Panzacola a los nueve dias del mes de Junio de mil ocho cientos y seis años.

(Signed) VICENTE SEBASTIAN PINTADO.

Don Juan Ventura Morales, intendente interino y superintendente g'ral subdelegado en esta provincia de la Florida occidental, juez de arribadas, de tierras y solares realengas, &c.

69 Por quanto habiendose presentado en el tribunal de esta intendencia D'n Juan Lind, en 26 de Septiembre, de 1803, pretendiendo comprar a justa tazacion quarenta mil arpanes de tierras realengas, que ofreció satisfacer un tercio de contado, otro en seis meses y el otro en un año desde el dia que se le expidise el titulo de propiedad; dando las seguridades correspondientes a favor de la r'l hac'da, y admitida dicha instancia se mandó poner a continuacion de ella por secretaria copia certificada, del opino de 22 de Julio del mismo año dirigido a la misma intendencia a los s'res comisarios de la entraga de la provincia de la Luisiana, de resultas de la solicitud hecha por D'n Tomas Urquhart, para la compra de cinquenta mil arpanes de tierra, y de la requesta que dieron dichos señores en 28 del mismo mes de Julio,

70 de lo que se di'o vista al s'or fiscal de r'l hacienda, que opinó a favor de la venta, pediendo conforme al reglamento las condiciones que le parecieron convenientes para seguridad de la real hacienda. Se mandó en seguida, se extendiese copia del dictamen dado por el s'or teniente de gobernador, y auditor de guerra con fecha de 9 de Agosto, en la misma solicitud de D'n Thomas Urquhart, y por providencia de 28 del expresado Sep'bre. Se mando librar despacho disponiendo el deslinde apeo y estimacion, de los quarenta mil arpanes de tierra de las que se hallasen vacantes en el puesto de Baton Rouge, cuyo despacho tubo efecto, librandose en 1° de Octubre del mismo año, y complimentado por el S'or Coronel D'n Carlos de Grand-Pré, commandante y
71 subdelegado de esta intendencia g'ral, en los dias siete a nueve de Noviembre del referido año procediendose por el segundo agrimensor, D'n Vicente Sebastian Pintado, capitan de caballeria de milicias, y en la actualidad agrimensor g'ral de esta provincia al apeo y deslinde de solos treinta y dos mil veinte y cinco arpanes planos de tierra en la forma siguiente: tres lienzos de tierra en el plano No. 1748, el primero baxo el No. 1° de tres mil quatro cientos quatro arpanes sobre la margen occidental del Rio de Sta. Elena, ó Amit a veinte y una millas y un tercio cortas al sur de la linea de limites entre el territorio de S. M. (que Dios gu'e) y los Estados Unidos de America, lindando por la parte septentrional con tierras de D'n Juan de Lasize, por la meridional con la del mismo Lind terreno No. 2; por la occidental con
72 las de D'n Armando Duplantier, y por la oriental con el antedicho Rio de Sta. Elena ó Amit. El segundo baxo el No. 2, sobre el mismo Rio Amit o Sta. Elena de dos mil quatrocientos treinta arpanes como a veinte y tres millas y media al sur de la antedicha linea de limites, cuyos linderos son por la parte arctica con tierras del referido Lind, terreno No. 1° por la antarctica con otras de D'n Armando Duplantier, por el poniente con otras del mismo Lind terreno No. 3, y por el levante con el anted'ho Rio Sta. Elena ó Amit, el tercero baxo el No. 3, de tres mil sete cientos ochenta arpanes sobre la margen oriental del arroyo de Sta. Rosalia, (alias Sandy Creeck,) y a la misma distancia de la linea de limites que el antecedente, cuyos linderos son por la parte del norte con tierras del citado D'n Armando Duplantier, por el sur con otras
73 del mismo Duplantier, y de D'n Christoval de Armas, por este con otras del mismo Lind, terreno No. 2, y por el oeste con el citado arroyo de Sta. Rosalia ó Sandy Creek.

Dos lienzos de tierra en el plano No. 1749, el uno baxo el No. 4 de tres cientos diez arpanes sobre la margen occidental del mencionado arroyo de Sta. Rosalia, o Sandy Creek, a una milla y un quarto de su confluencia con el Amit, cuyos linderos son por la parte boreal con tierras occupadas por Patricio Forbes, por la austral con las de D'n Carlos Ramos, por la occidental con tierras realengas, y por la oriental se termina con el antedicho arroyo Sandy Creek, o Sta. Rosalia. El otro lienzo baxo el No. 5, de mil treinta y cinco arpanes sobre la margen occidental del Rio Sta. Elena, o Amit a treinta y dos millas al sur
74 de la linea divisoria o paralela de treinta y un grados, cuyos linderas son por la parte arriba con tierras ocupadas por D'n Edouardo Ross, por la del abaxo con las de Nehemias Power por el fondo con tierras realengas, y por el frente se termina con la orilla del antedicho Rio Amit ó Sta. Elena.

Un lienzo de tierra, No. 1750, de cinco mil quatro cientos setenta arpanes baxo el No. 6 sobre la margen occidental del Rio Comit a doze millas y tres quartos de la linea que separe la parte de los dominios del Rey con el territorio americano, cuyos linderos por la parte del norte

son con tierras apeadas para D'n Manuel Garcia y D'n Juan De Lasize, por el sur con tierras medidas a favor de D'n Christoval de Armas, por el este confina con el antedicho Rio Comit y por el oeste con tierras realengas.

75 Tres lienzos de tierra en el plano No. 1751, el uno baxo el No. 7 de dos mil tres cientos setenta arpanes en el distrito de la Féleciana sobre la margen occidental del arroyo del Bosque Roxo, a quatro y media millas al este del Rio Feliciana y a trece millas al nordeste quarta al norte de su confluencia con el Mississippi, lindando por la parte del nornordeste con otro terreno del interesado; No. 8, por el sur sudoeste con tierras de D'n Juan Bautista Labatut y otras apeadas a favor de D'n Manuel Garcia, por el oesnoroeste con tierras de Santiago Foster, y casi con las de D'n Jose Bernardo de Heria, y por la parte que mira al esnordeste se termina en el antedicho arroyo del Bosque Roxo; otro lienzo de tierra baxo el No. 8, de ocho cientos treinta y seis arpanes en el mismo distrito y margen occidental del arroyo del
76 Bosque Roxo, cuyos linderos son por la parte del sur sudoeste con el antedicho terreno No. 7 y con tierras de Santiago Foster, por la del nornordeste con otro terreno del interesado No. 9, por la del oesnordeste con tierras realengas, y por la parte que mira al esnordeste con el antedicho arroyo del Bosque Boxo; otro lienzo de tierra senalado en el dicho plano con el No. 9 de seis cientos veinte arpanes en el referido distrito y margen occidental del Bosque Roxo a quatro millas al este del Rio Feliciana, y a diez y seis millas al uordeste quarta al norte de su confluencia con el Mississippi, cuyos linderos son por parte del sur sudoeste con tierras del interesado; del plano No. 8, por el nornoreste con tierras de D'n Francisco Miranda, por el oeste con tierras realengas, y por el este con el dicho arroyo del Bosque Roxo.

77 Dos lienzos de tierra contenidos en el plano No. 1752, el uno baxo el numero 1° de once mil cien arpanes en el citado distrito de la Nueva Feliciana en la margen occidental del brazo del este del rio del mismo nombre a quatro millas y quarta al sur de los treinta y un grados, limites entre los dominios del rey y el territorio americano; cuyos linderos son por la parte del norte con tierras de D'n Manuel de Lauzas, por la del sur con las de Santiago Richardson, tierras vacantes, el arroyo de los Castores, y tierras de D'n Juan Tala, por el este con las de D'n Jose Reynes, y con las reclamadas por Guillermo Stuart, por el oeste con las de Isabel McFarland, y con el antedicho brazo del este del Rio Feliciana, y por el centro con tierras de D'n Isaac y D'n Juan Johnson, D'n Pedro Marigny y D'n David Lejeüne;
78 siendo de advertir que los onze mil y cien arpanes planos se hallan contenidas en el plano figurativo entre las lineas rectas y curbas marcadas con color roxo, exclusivos tres cientas arpanes medidos anteriormente en las cercanias del punto A de dicho plano a favor de Domingo Sorero ya difunto. El otro lienzo contenido en el mismo plano No. 1752, de seis cientos setenta en el indicado distrito de la Nueva Feliciana a seis millas y tres quartas del rio del mismo nombre y a seis millas y tres quartas al sur del paralelo de treinta y un grados lindando por el norte con tierras de D'n Juan Tala, por el sur con otras vacantes, por el este con las de D'n Jose Reynes, y por el oeste con las reclamadas por Guillermo Stuart, y las concedidas a D'n Francisco Miranda, y a Luis Delatt. Los cuales treinta y dos mil veinte y cinco arpanes de tierra que se comprehenden en los onze lienzos de
79 tierra contenidos en los cinco planos figurativos formados por el actual agrimensor general, D'n Vicente Sebastian Pintado con la correspondiente explicacion fueron estimados por los peritos nombrados

por parte de la r'l hacienda: D'n Pedro Allain y D'n Felix Bernardo Dumoutier; y por la del interesado: D'n Felipe Hicky, y Don Bernardo Dubroca con asistencia del agrimensor de D'n Samuel Fulton como apoderado de D'n Juan Lind, y de dos testigos judiciales en falta de escribano a razon de diez sueldos torneses cada arpan plano de los veinte mil dos cientos cinquenta y cinco contenidos en los planos figurativos numerados desde 1 a 9, y los onze mil sete cientos y setenta contenidos en los numeros diez y onze a razon de nueve sueldos con que se conformó el apoderado de D'n Juan Lind, y recibió en aquel acto dichas
80 tierras por compradas a su entera satisfaccion firmado la diligencia con los peritos, estimadores, agrimensor y testigos. Debiendo prevenirse para evitar toda duda que el lienzo de tierra No. 4 se dice linda con las de Patricio Forbes, por que este reclamaba mas porcion de la que por su familia podia tocarle por lo que se estrecho el espacio que pretendia como explica la nota del agrimensor y estimadores; y unidos al expediente los cinco planos expresados con las diligencias de apeo, y estimacion, que presentó el interesado se dio vista al s'or fiscal de real hacienda por decreto de veinte y ocho de Abril de mil ocho cientos quatro, y contestó en treinta del misma mes, pidiendo se formalizase por el ministerio de r'l hacienda, la minuta de la estimacion de dichas tierras que encontro arreglada. Pedi los autos por providencia de treinta de Abril de mil ocho cientos y quatro años y por otra de dos de Mayo siguiente dispuse que el agrimensor g'ral, D'n Carlos
81 Trudeau, examinase las operaciones del particular Don Vicente Pintado, tomase la razon si las encontrase arregladas y proveyse los planos dobles para accompanar al titulo; lo que no turo efecto hasta que el 25 de Abril del presente año se presento el referido, D'n Juan Lind, exponiendo que a causa de haberse opuesto el señor commandante de esta plaza no solo a las concessiones de tierras si no tambien a reconocer la autoridad de esta intendencia en la jurisdiccion de su mando, habia quedado pendiente como todas las démas, pero que cerciorado de haber vuelto las cosas a su antiguo orden recurria de nuevo suplicando que en atencion a los muchos gastos, y desembolzos que hizo en el deslinde, y apeo de las tierras se le admitirse el pago del valor
82 de ellas, y le proveyeron los titulos en debida forma, y habiendose reunido las diligencias por providencia de tres de Junio se pasaron al agrimensor General D'n Vicente Pintado, para que evaquase lo que se previero a su antecesor, D'n Carlos Trudeau, lo que cumplió agregando la copia de los planos y diligencias de apeo y estimacion, y registrado todo en el libro VI, desde la foxa ocho hasta la catorze, inclusivos, provei en tres de Junio ultimo un anto cuyo tenor es el que sigue. Vistos y que habiendose pedido en tiempo habil D'n Juan Lind, la merced a titulo de venta de quarenta mil arpanes de tierra, en el distrito de Baton Rouge, de los cuales segun consta de los cinco planos unidos a estas diligencias, se han deslindado, y apeado treinta y dos mil veinte y cinco arpanes cuyo costo ha soportado dicho Lind.

Teniendo igualmente en consideracion, no solo que por real
83 orden de veinte y nueve de Mayo del año de mil ocho cientos quatro aprobó S. M. la venta de tierras hechas en el distrito de Baton Rouge, sino que tambien por otra real determinacion de veinte de Febrero del año proximo pasado, levanto los inconvenientes puestos por la comandancia de esta provincia a la venta de tierras realengas y mandó, que la intendencia que está a mi cargo concluyese los expedientes que estubieron iniciados, y admitiera las solicitudes que se presentasen con el propio objeto, a fin de sacar el mejor partido en favor del real erario, que ofreciesen las circunstancias, consequente a lo qual en

vista de lo opinado por el s'or fiscal de real hacienda, y consultado por el s'or auditor en el expediente formalizado para poner expedito este punto: se acordó en junta de real hacienda celebrada en
84 veinte y uno del anterior, se procediese a concluir los causas iniciadas, sobre venta de tierras, y que se admitiesen quantas nuevas demandas se hizieron, para por este medio llenar las intenciones soberanas. Teniendo asimismo el consentimiento que dio la parte del real fisco en su escrito de treinta de Abril de 1834, a la estimacion efectuada a los citados treinta y dos mil veinte y cinco arpanes de tierras planos apeados en los onze lienzos que demuestran los cinco planos: concedense desde luego al esprez'do D'n Juan Lind los referidos treinta y dos mil veinte y cinco arpanes con arreglo a los linderas que manifiestan los predichos cinco planos levantados por el agrimensor que ahora lo es general de la provincia, D'n Vicente Sebastian Pintado, y en su consequencia aprovandose como desde luego se aprueba la estimacion hecha por los peritos juramentados, a razon diez sueldos
85 torneses los veinte mil dos cientos cinquenta y cinco arpanes contenidos en los planos de 1 a 9 y al respecto de nueve sueldos los onze mil sete cientos setenta arpanes contenidos en los planos No. 10 y 11, pase el expediente al ministerio de real hacienda para que liquidado por el, el importe se haga entero en caxas reales en certificaciones de credito de los oficios de real hacienda de la Luisiana, con mas lo correspondiente al derecho de media annata, y conducion a España, y constando en este expediente el efectivo pago, despachase el titulo de propiedad en forma. Y verificada la liquidacion por el ministerio de real hacienda de esta plaza resultó que los treinta y dos mil veinte y cinco arpanes planos de tierra concedidos a D'n Juan Lind conforme a su tazacion importaron tres mil ciento setenta y cinco pesos,
86 seis reales y diez y siete maravedis comprehendida en esta suma los noventa y un pesos correspondientes al r'l derecho de media annata, y dies y ocho por ciento de su conduccion a los reynos de Castilla. Segun se comprueba de la carta de pago que en dos del corriente mes otorgó el señor ministro tesorero de estas reales caxas a favor del sub-teniente del regimiento de la Luisiana, D'n Francisco Dalcour como apoderado substituto de D'n Juan Lind, la cual corre con el testimonio del poder en el expediente del asunto.

Y usando de las facultades que por mi ministerio me son conferidos, en nombre del Rey, nuestro señor, (Dios le guarde,) concedo al supradicho D'n Juan Lind, a titulo de venta por la real hacienda los treinta y dos mil veinte y cinco arpanes planos de tierra realenga en los parajes, y baxo los linderos rumbos y distancias que se mencionan
87 en los cinco planos figurativos y diligencias de apeo certificaciones del agrimensor general, D'n Vicente Sebastian Pintado, cuyos duplicados para que en todo tiempo conste se colocan y archivan con este titulo: en consequencia le declaró, e imparto entero, y directo dominio de los enunciados treinta y dos mil veinte y cinco arpanes planos de tierra para que como suyos propios los posea, disjunte, disponga y enajene a su voluntad como que los ha comprado y pagado a la real hacienda; y le doy poder para que tome su posecion en la que pongo y amparo sin perjuicio de tercero que mejor derecho tenga: con la calidad, y condicion, que ha de observar y cumplir con lo dispuesto en la instruccion formada, y publicada por la intendencia general de la
88 retrocedida provincia de la Luisiana en diez y siete de Julio de mil sete cientos noventa y nueve de que se impondra para su observancia. En fe de lo cual mandé despachar el presente firmado de mi mano, sellado con el de mis armas y refrendado del infrascrito secre-

turio interino de esta intendencia general, en cuya oficina, como en las del ministerio de real hacienda de esta plaza se tomará razon.

Dado en Panzacola a doce de Julio de mil ochocientas seis.

[SEAL.] (Signed) JUAN VENTURA MORALES.
FRANCO GUTIERRES DE ARROYO.

Queda registrado el titulo antecedente a foxs 102 buelta hasta la 109, id. del libro destinado a este efecto, el que por ahora existe a mi cargo, y a que me reimto.

Panzacola veinte y uno de Julio de mil ochocientos y seis.

(Signed) FRANCO GUTIERRES DE ARROYO.

89 La contaduria pral, de exto, de esta provincia se tomo razon del titulo antecedente al folio 60.

Panzacola, 14 de Agosto, de 1806.

(Signed) JUAN FRANCO ARMANDO.

NOTA.—The foregoing Document "A" is also thus endorsed:

U. S. dist. court. Filed June 16, 1846. L. E. Simonds, dep. cl'k. Offered in evidence before jury; objected to, but admitted and read June 1, 1849.

ROBR. M. LUSHER, *Dep. Clerk.*

Translation of foregoing Document "A," made by Edward Lawre.—Filed Dec. 9th, 1849.

NOTA.—For plans, see originals, pages 16–20, inc.

90 Title of property to 32,025 arpents of land bought by Don Juan Lind, situated in the district of Baton Rouge and New Feliciana, with five figurative plans, with the notes and explanations of the royal and special surveyor, Don Vicente Sebastian Pintado.

D'n Vicente Sebastian Pintado, captain of militia cavalry, and deputy surveyor of this province:

I certify that there have been measured and the boundaries defined in favor of Don Juan Lind, eleven tracts of land, containing altogether thirty-two thousand and twenty-five superficial arpents, measured by the lineal perch of the city of Paris of eighteen feet, of said city, counting one hundred superficial perches to the arpent, according to
91 the agrarian custom of this province; the situation or location, boundaries, and number of superficial arpents of each tract of land are as follows:

Plan No. 1. Three thousand four hundred and four arpents on the west bank of the river St. Helena, or Amite, at 21 miles and ½ in the direction south of the boundary line of the domains of his Majesty (whom may God preserve) and those of the United States of America, bounded on the north by the lands of D'n Juan de Lasize, on the south by the lands of the party in interest, (tract No. 2,) on the west by the lands of Don Armand Duplantier, and on the east bounded or terminating by said river Amite.

Plan No. 2. Two thousand four hundred and thirty arpents on the said west bank of the river Amite, at twenty-three miles and
92 a half to the south of the said boundary line, bounded on the north by lands of the party in interest, (tract No. 1,) on the S. by lands of Armand Duplantier, on the west by other lands of the party

in interest, (tract No. 3,) and on the east bounded or terminating by said river St. Helena, or Amite.

Plan No. 3. Three thousand seven hundred and eighty superficial arpents on the east bank of the rivulet St. Rosalie, commonly called Sandy Creek, and at the same distance of the boundary line as the preceding tract, bounded on the north by lands of D'n Armand Duplantier, on the south by other lands of said Duplantier and of Don Christoval de Arinas, on the east by tract No. 2 of the party in interest, and on
93 the west terminating by said Sandy Creek.

Plan No. 4. Three hundred and ten arpents on the west bank of said rivulet (arroyo) Sandy Creek, at one mile and a fourth of its junction with the Amite, bounded on the north by lands occupied by Patricio Forbes, on the south by a tract of twelve thousand one hundred and eight arpents of Don Carlos Ramas, on the west by lands uncultivated, and on the east terminating by s'd rivulet (arroyo) Sandy Creek.

Plan No. 5. One thousand and thirty-five arpents on the west bank of the river St. Helena, or Amite, at thirty-two miles to the south of the line of division or parallel of 31 degrees, bounded on the upper part by lands occupied by Don Eduardo Ross, on the lower part by
94 lands occupied by Nehemias Power, on the depth by royal lands, and in front terminating by said river Amite.

Plan No. 6. Five thousand four hundred and seventy arpents on the west bank of the river Comite, at twelve miles and three-fourths of the line which divides the domains of the King from the American territory, bounded on the north by lands surveyed for Don Manuel Garcia, and a tract of five hundred arpents conceded to Don Juan Delasize by his excellency Don Manuel Goyoso de Lemos, formerly governor general on the S. by lands measured for Don Christoval de Arinas, on the east bounded by said river Comite, and on the west by royal possessions.

Plan No. 7. Two thousand three hundred and seventy arpents in the district of Feliciana, on the west bank of the rivulet "Redwood,"
95 (Bosque Roxo,) at four and a half miles to the east of the river Feliciana, and at thirteen miles to the N. E. ¼ N. of its junction with the Mississippi, bounded on the N. N. E. side by lands of the party in interest, (tract No. 8;) on the S. S. W. by lands of Don Juan Baptist Labatut and others, surveyed in favor of Don Manuel Garcia, on the W. N. W. by lands of Santiago Foster, and almost by those of D'n Joseph Bernardo de Olero, and on the side looking to the E. N. E. terminating by said rivulet of "Redwood."

Plan No. 8. Eight hundred and thirty-six arpents in the same district, and west bank of "Redwood," bounded on the S. S. west by said mentioned tract No. 7, and lands of Santiago Foster, on the N. N. east by another tract of the party in interest No. 9, on the N. N. west by
96 royal lands, and on the side looking to the E. N. east by said mentioned rivulet "Redwood."

Plan No. 9. Six hundred and seventy arpents in said district, and west bank of "Redwood," (Bosque Roxo,) at four miles to the east of the river Feliciana, and sixteen miles to the N. E. ¼ N. of its junction with the Mississippi, bounded on the S. S. west by tract No. 8 of the party in interest; on the N. N. west by lands of Don Francisco de Miranda; on the west by royal dominions, and on the east by said "Redwood."

Plan No. 10. Eleven thousand one hundred arpents in the said district of Feliciana, on the east bank of the eastern branch of the river of the name of that district, at four miles and a fourth to the south of
97 the thirty-one degrees, boundaries between these domains and

the American territory; bounded on the north by lands of Don Manuel de Lanzos, on the south by lands of Santiago Richardson, vacant lands, the rivulet of the Beavers, (arroyo de los Castores,) and lands of Don Juan Tala; on the east by lands of Don Joseph Reynes, and those claimed by Guillain Smart; on the west by lands of Isabel McFarland, and said east branch of the river Feliciana; and in the center by lands of Don Isaac and Don Juan Johnson, Don Pedro de Marigny, and Don Manuel Lejeune, which eleven thousand one hundred arpents are to be found between the straight and curb lines marked in red on the plan, exclusive of 300 superficial arpents measured previously, in the vicinity of point "A" of the plan, in favor of Domingo Loreno, now dead.

98 Plan No. 11. Six hundred and seventy arpents in said district, at six miles and three-fourths to the east of the river Feliciana, and at six miles and three-fourths of the parallel of thirty-one degrees, bounded on the north by lands of Don Juan Tala; on the south by lands which are vacant; on the east by the lands of Don Joseph Reynes, and on the west by lands claimed by Guillermo Stewart, and those conceded to Don Francisco Miranda and Luis Delatt, all of which are clearly and distinctly shewn in the plans which precede, in which plans each tract is represented by itself; also the dimensions of the boundaries in lineal perches; the direction of said boundaries by the compass, the declination of which is N. E.; the trees and mounds which serve of landmarks, and other natural and artificial limits.

99 Those thirty-two thousand and twenty-five arpents are part of the forty thousand arpents which the party in interest desired to purchase from the royal treasury, and which the intendant general did order to be measured and valued by a decree of 28 September last, as appears from the order delivered to D'n Carlos de Grand-Pré, colonel of the royal army, civil and military governor of this post, and sub-delegate of the royal treasury, and of those for which Don Samuel Fulton, the agent of the party in interest, requested that the necessary papers should be delivered to him, in order to obtain a title in due form during the time necessary to survey and define the boundaries of the seven thousand nine hundred and twenty-five arpents, which would complete the forty thousand arpents; and the said governor and sub-delegate having appointed as experienced appraisers, in behalf of the royal

100 treasury, Don Pedro Allain and Don Bernardo Dumontier, and the agent of the party in interest having appointed on his side Don Philip Hicky & Don Bernardo Dubroca; and said Don Philipe having absented himself, his father, Don Manuel Hicky was appointed in his place. All said persons, assisted by two witnesses, Luis Delatt and Juan Poirett, proceeded to the valuation of the land in the following manner:

The twenty-two thousand five hundred and fifty-five arpents contained in the plans No. 1 to 9, inclusive, were valued at the rate of ten cents each superficial arpent, and the eleven thousand seven hundred and seventy arpents in plans No. 10 to 11, at the rate of nine cents by superficial arpents, making in all the sum of three thousand and eighty-

101 four dollars six bits and a half, which valuation being shown to the agent of the party in interest, Don Samuel Fulton, it was approved by him, receiving said lands as purchased, acknowledging the delivery thereof to his satisfaction, and with the appraisers and witnesses he signed these presents, in Baton Rouge, on the fifteenth day of March, eighteen hundred and four.

NOTE.—In the proceedings or return of survey of the tract of twelve

thousand one hundred and eight arpents of Don Carlos Ramos, said tract is represented to be bounded on the north by lands occupied by Patricio Forbes; and speaking of tract No. 4, it is represented bounded on the same side (north) by lands occupied also by Patricio Forbes. The reason is, that in first instance Forbes solicited a grant of land as far as these, and finding afterwards that this quantity was larger than his
102 family had a right to, he reduced the demands which he had made.

VICENTE SEBASTIAN PINTADO.
SAMUEL FULTON.
PHILIP HICKY.
BERNARDO DUBROCA.
F. BERNARD DUMONTIER.
P. ALLAIN.
JUAN POIRETT.
LUIS DELATT.

Don Vincent Sebastian Pintado, surveyor general of Western Florida:

I certify that the plans, returns of survey, and the appraisement above mentioned, are true copies of the original documents appertaining to the case; that they are registered in book VI of surveys, from folio 8 to 14, inclusive; and in conformity to a decree of his excellency Don Juan Ventura Morales, intendant general pro temp. of this province, and sub-delegate of the sup. intendency general, of the third of the
103 present month, I give this copy, to be annexed to the regular title.

In the place of Pensacola, on the ninth day of the month of June, eighteen hundred and six.

VINCENT SEBASTIAN PINTADO.

I, Don Juan Ventura Morales, intendant pro temp., and sup. delegate general of the province of West Florida, judge, taking cognizance of maritime arrivals, of royal possessions, &c., &c.:

Whereas Don Juan Lind has presented himself before this intendency on the 26th day of September, eighteen hundred and three, asking to purchase, at a just valuation, forty thousand arpents of royal lands, which he offers to pay, one-third in cash, one-third in six months, and the other third in one year from the day that the title of property will be given to him, giving the necessary securities to the royal treas-
104 ury; and said application being granted, it was ordered, in consequence, that there should be inserted by the secretary a certified copy of the official letter of the twenty-second day of July, of the same year, addressed by this intendency to the commissioners appointed for the transfer of the province of Louisiana, on the subject of the petition presented by Thos. Urquhart, for the purchase of fifty thousand arpents of land, and of the answer which was made, on the twenty-eighth day of the same month of July, by the said commissioners, which being submitted to the señor fiscal of the royal treasury, he declared himself in favor of said application, specifying the conditions which appeared to him necessary for the security of the royal treasury. It
105 was further ordered that a copy be inserted of the opinion given by his excell'y the lieutenant governor and auditor of war, under date of the 9th day of August, in relation to the said application of Don Thomas Urquhart; and by a decree of the twenty-eighth day of said month of September, it was ordered that an order be given

respecting the measurement, survey, and valuation of the forty thousand arpents of land to be taken from those which are vacant in the post of Baton Rouge, and that the same should be surveyed and appraised, which order was given on the first day of October of the said year, and executed by the Colonel D'n Carlos de Grand-Pré, commandant and subdelegate of the general intendency, from the seventh to the ninth day of November of the aforesaid year; proceeding with the aid-
106 surveyor Don Vicente Sebastian Pintado, captain of cavalry of milicias, and then acting as general surveyor of this province, to make the survey, and mark the boundaries of only thirty-two thousand and twenty-five superficial arpents of land, in the following manner:

Three tracts of land in the plan No. 1748, the first bearing No. 1, measuring three thousand four hundred and four arpents, on the west bank of the river St. Helena, or Amite, at twenty-one miles and one-third south of the boundary line between the territory of his Majesty (whom may God preserve) and the United States, bounded north by the lands of D'n Juan Delasize, south by the lands of said Lind, (tract No. 2,) west by the lands of Don Armando Duplantier, and east by the afore-
107 said river St. Helena, or Amite; the second tract being No. 2, on the same Amite, or St. Helena, measuring five thousand four hundred and thirty arpent, and at about twenty-three miles and a half south of the aforesaid boundary line, which lot is bounded north by the lands of the aforesaid Lind, (tract No. 1,) south by other lands of Don Armando Duplantier, west by other lands of the aforesaid Lind, (tract No. 3,) and east by the aforesaid river St. Helena, or Amite; the third lot bearing No. 3, and measuring three thousand seven hundred and eighty arpents on the east bank of the rivulet Ste. Rosalie, alias Sandy Creek, and at the same distance of the aforesaid boundary line as the previous tract No. 2, which lot is bounded north by the lands of the aforesaid Armando Duplantier, south by other lands of said Duplantier
108 and of Christoval De Arinas, east by other lands of said Lind, (tract No. 2,) and west by the said rivulet of St. Rosalie, or "Sandy Creek."

Two tracts of land in plan No. 1749, one bearing No. 4, measuring three hundred and ten arpents on the west bank of the above-mentioned rivulet St. Rosalie, or "Sandy Creek," at a distance of one mile and a quarter of its junction with the river Amite, bounded north by the lands occupied by Patricio Forbes, south by lands of Don Carlos Ramos, west by royal lands, and east it is terminated by the above-mentioned rivulet "Sandy Creek," or St. Rosalie; the other lot bearing No. 5, and measuring one thousand and thirty-five arpents, on the west bank of the river St. Helena, or Amite, at thirty-two miles south of the divi-
109 sion line, bounded on the upper part by lands occupied by Don Edouardo Ross, on the lower part by lands of Nehemiah Power, in the depth by royal lands, and in front by the bank of the aforesaid river Amite, or St. Helena; one tract of land, No. 1750, of five thousand four hundred and seventy arpents, bearing No. 6, on the west bank of the river Comite, at twelve miles and three-fourths of the line which divides the dominions of the King from the American territory, which tract is bounded north by lands surveyed for Don Manuel Garcia and Don Juan Delazize, south by lands measured in favor of Don Christoval de Arinas, east by the aforesaid river Comite, and west by royal lands.

Three tracts of land in plan No. 1751; one bearing No. 7, and measuring two thousand three hundred and seventy arpents, in the district of Feliciana, on the west bank of the rivulet Redwood, (Bosque
110 Roxo,) at four and a half miles east of the river Feliciana, at thir-

teen miles northeast one-fourth north of its junction with the Mississippi, bounded on the north-northeast side by another lot belonging to the party in interest, No. 8, south-southwest by lands belonging to Juan Baptista Labatut and others, surveyed for Don Manual Garcia; west-northwest by lands belonging to Santiago Foster, and next to the lands of Don Jose Bernardo de Heira, and east-northeast it terminates at the aforesaid rivulet Redwood, (Bosque Roxo.)

One tract of land bearing No. 8, and measuring eight hundred and thirty-six arpents, situated in the same district, and on the west bank of the rivulet Redwood, (Bosque Roxo;) bounded south-south-
111 west by the aforesaid tract 7, &c., &c., by lands of Don Santiago Foster, north-northeast by another lot, No. 9, of the party in interest, west-northwest by royal lands, and east northeast by the said rivulet Redwood, (Bosque Roxo.)

One tract of land, designated in the plan by No. 9, and measuring six hundred and twenty arpents, in the aforesaid district, and west bank of the rivulet Redwood, (Bosque Roxo,) four miles east of the river Feliciana, and sixteen miles northeast one-fourth north of its junction with the Mississippi River, bounded south-southwest by lands of the party in interest, (No. 8,) north-northwest by lands of Francisco Miranda, west by royal lands, and east by the said rivulet Redwood, (Bosque Roxo;) two tracts of land comprised in the plan No. 1752, one bearing No. 10, and measuring eleven thousand and one hundred arpents in the
112 said district of New Feliciana, on the west bank of the east branch of the river of the same name, at four miles and a fourth, south of the thirty-first degree of the limits dividing the domains of the King from the American territory, bounded north by lands belonging to Don Manuel de Lauzos, south by lands of Santiago Richardson, vacant lands, (arroyo de los Castores,) "Beaver's Creek," and lands of Don Juan Tala, east by lands of Don José Reynes, and other lands claimed by Guillermo Stuart, west by land of Isabel McFarland, and the aforesaid east branch of the river Feliciana, and in the center by the lands of Don Isaac and Don Juan Johnson, Don Pedro Marigny, and Don David Sesnire.

113 It is well to remark that the eleven thousand and one hundred superficial arpents are to be found comprised in the figurative plans, between the straight and curb lines marked in red, exclusive of three hundred arpents previously measured in the vicinity of the point "A" of said plan in favor of Domingo Lorero, now deceased; the other tract is contained in the same plan No. 1752, measuring six hundred and seventy arpents in the above-mentioned district of New Feliciana, at six miles and three-quarters of the river bearing the same name, and at six miles and three-fourths south of the parallel of thirty-one degrees, bounded north by lands of Juan Tala, south by others vacant, east by lands of José Reynes, and west by those claimed by Guillemot Stewart, and those granted to Francisco Miranda and to Luis Delatt;
114 the said thirty-two thousand and twenty-five arpents which are comprised in the eleven tracts of land in the five figurative plans, drawn by the present surveyor general, Don Vicente Sebastian Pintado, were appraised after the necessary explanations by experts, Don Pedro Allain and Don Felix Bernardo Dumontier, appointed on behalf of the royal treasury, and Don Philip Hicky, and Don Bernardo Dubroca, on behalf of the party in interest, assisted by the surveyor Don Samuel Fulton, as attorney in fact of Don Juan Lynd, and of two judicial witnesses in the absence of a notary, at the price of ten cents per superficial arpent for the twenty thousand two hundred and fifty-five arpents contained in the figurative plans, numbered from one to

nine; and nine cents per arpent for the eleven thousand seven
115 hundred and seventy arpens contained in the numbers ten and
eleven, which valuation was agreed to by the attorney in fact for D'n Juan Lynd, who did receive in consequence of said proceedings or operations of survey, with the appraisers, the surveyor, and the witnesses. To remove all difficulties respecting tract No. 4, which is represented to be bounded by the lands of Patricio Forbes, it is proper to state that said tract is so put down, because Forbes claimed as far as these, but this being a larger quantity than his family had a right to, he abandoned the claim he had set forth, as explained by the note of the surveyor and appraisers; and the aforesaid five plans and returns of survey and appraisement being annexed to the proceedings and
presented by the party in interest were submitted to the señor
116 fiscal of the royal treasury on the 27th April, 1804, and he ordered, on the 30th of the same month, that there should be made by the officers of the royal treasury a calculation of the appraisement of said lands, which he considered disposed of. By a decree of the thirty-first of April, eighteen hundred and four, and of the second day of May following, he ordered that the surveyor general, Don Carlos Trudeau, should examine the operations of Vincent Pintado, and if they were found correct to furnish the duplicates of the plans to be annexed to the title, which was not done until the twenty-fifth of April of the present year, when the aforesaid Juan Lind presented himself representing that in consequence of his excellency the commandant of
this place having not only opposed himself to the concessions of
117 lands, but also to recognize the authority of this intendency within the territory under his command, that all affairs had remained pending, but having ascertained that things had been restored to their ancient order, he now applied praying, that in consideration of the large expenses and disbursements made by him for having the limits marked, and the survey of the lands made, that the payment of their value be received, and that he should be furnished with the titles, made in due form; and having united all the proceedings in virtue of a decree of the third of June, they were transmitted to the surveyor general, Don Vincent Pintado, in order that he should complete what his predecessor, Don Carlos Trudeau, had commenced, which he did
perform, annexing a copy of the plans and returns of survey and
118 appraisement, and registered the whole in book VI, from page 8 to page 14, inclusive, and furnished on the third of June last an act which reads as follows, to wit: In consideration of Don Juan Lind having solicited in due time the grant, by sale of forty thousand arpents of land in the district of Baton Rouge, out of which, as it appears by the five plans annexed to this document, the limits were marked, and the survey made of only thirty-two thousand and twenty-five arpents, and the costs of which have been paid by said Lind, taking also in consideration that, not only by a royal order dated May the twenty-ninth, eighteen hundred and four, his Majesty has approved of the sales of
lands made in the district of Baton Rouge, but that also by
119 another royal decision, dated February the twentieth last, he has removed all the obstacles which have been made to the sales of the royal lands by the commandant of this province, and he has ordered that the intendency under my charge should terminate the transactions which had been commenced, and should admit all the petitions which might be presented on this subject, with a view of realizing for the royal treasury the utmost benefit which circumstances will allow; in consequence thereof, and the opinion expressed by the senor fiscal of the

royal treasury, and the advice of the auditor on this subject, it was resolved in an assembly of the royal treasury, held on the twenty-first of the preceding month, that they should proceed to terminate all the transactions already commenced in relation to sales of lands, and that all new demands should be accepted, in order to comply entirely
120 with the intention of his Majesty, and having also the approval given by señor fiscal of the royal treasury, in his decree of the thirtieth of April, eighteen hundred and four, relative to the appraisement made of the aforesaid thirty-two thousand and twenty-five superficial arpents, surveyed in the eleven tracts of land described in the five plans; therefore the thirty-two thousand and twenty-five arpents of land, according to the boundaries marked on the aforesaid five plans drawn by the surveyor Don Vicente Sebastian Pintado, who is now surveyor general, are from this date granted to the said Juan Lind, & the appraisements made then, by the sworn experts, at the rate of ten cents per arpent for the twenty thousand two hundred & fifty-
121 five arpents, contained in the plans from one to nine, and at the rate of nine cents per arpent for the eleven thousand seven hundred and twenty arpents contained in the plans No. 10 & 11, are approved, and the proceedings sent to the officers of the royal treasury in order that after calculation and payment of the amount in the royal coffers of the royal treasury of Louisiana, with the duty of half-yearly tribute and the transportation of the same to Spain, all of which is to be attested by the receipt of payment, a title of property be delivered; and the calculations of the amount of the property having been made by the officers of the Royal Treasury of this place, it appeared that the thirty-two thousand and twenty-five superficial arpens of land granted to said Juan Lind amounted, according to valuation, to $3,175 &
122 6 reales & 17 maravedis, say three thousand one hundred and seventy-five dollars six reales and seventeen maravedis, including in this amount the ninety-one dollars for the royal duty of half-yearly tribute and eighteen per cent. for the transportation of the said half-yearly tribute to the kingdom of Castilla, according to the receipt of payment, which, on the second instant, the minister treasurer of the royal coffers gave to the sub-lieutenant of the regiment of Louisiana, Don Francisco Dalcour, the agent and substitute of Don Juan Lind, as shown by the power of attorney mentioned in said proceedings; therefore, in virtue of the power which I hold by my office, and in the name of the King, (whom may God preserve,) I grant to the aforesaid Juan Lind under the title of sale from the royal treasury said thirty-
123 two thousand and twenty-five superficial arpens of royal lands in said places, and according to the boundaries, directions, and the distances mentioned in the five figurative plans and returns of survey certified by the surveyor general Don Vicente Sebastian Pintado, duplicates of which will, for evidence thereof, be annexed and registered with this title; consequently, I impart to him clear and entire ownership over said thirty-two thousand and twenty-five superficial arpens of land, so that, as his own property, he may possess, dispose, alienate them at his pleasure, having bought and paid for them to the royal treasury; and I do authorize him to take possession of said land, in which possession I hereby place him, without prejudice to any third party who might have a better right, under the conditions that he will observe and comply with the laws and regulations made and published by the general intendancy of the retroceded province of Louisiana,
124 dated the seventeenth of July, seventeen hundred and ninety-

nine, of which laws and regulations he will inform himself in order to observe and comply with them.

In faith of which I have given these presents, signed by me, sealed with my arms, and countersigned by the secretary pro tem. of the general intendancy, in which office, as well as in the office of the royal treasury of this place, this title will be registered.

Given in Pensacola on the twelfth day of July, eighteen hundred and six.

(Signed) JUAN VENTURA MORALES.
FRANCISCO GUTIERREZ ARROYO.

The above title has been registered in folio 102 to 109, inclusive, of the book kept for that purpose now under my charge, and to which I refer.

(Signed) FRANCISCO GUTIERRES DE ARROYO.

125 Pensacola, twenty-first July, eighteen hundred and six.

The above title has been registered (en la contaduria pr'al de exercito de esta provincia) in the office of the principal auditor for the army in this province, in fol. 60.

(Signed) JUAN FRANCISCO ARMAND DE COURVILLE.

Pensacola, fourteenth of August, eighteen hundred and six.

Second. Depositions of Isidor Labatut, Evarisse Blanc, and Bernard Marigny, which are in the words and figures following, viz:

THE HEIRS OF JOHN LYND }
vs.
THE UNITED STATES. }

According to notices duly issued to the district attorney of
126 the United States, and by virtue of subpœna served upon certain witnesses for the plaintiffs in the above-entitled cause, on this 13th day of April, 1847, the plaintiffs, represented by their counsel, W. W. King, esquire, and the defendants, by Thomas I. Durant, U. States district attorney, appeared before me, the undersigned commissioner, who proceeded to take the testimony of the several witnesses who appeared.

Isidor Labatut, witness on behalf of the plaintiffs, being duly sworn, states that he was acquainted with John Lynd, the deceased; that he has been dead about twenty-five years, as well as witness recollects. Deponent knew him very well; he knows the heirs of said Lynd; they were four children, three boys and one girl. The boys named
127 Robert, Henry, and William, and the girl named Rosa, now the wife of R. C. Cammack. Deponent was sometimes the family physician, and he visited them as an intimate acquaintance.

Cross-examined.

He knows nothing whatever of the present suit, except having heard that the family had a claim for land.

(Signed) FRE LABATUT.

E. Blanc, witness for the plaintiffs, being duly sworn, states that he knew John Lynd, the deceased; he was a brother-in-law of the deponent, having married his sister. John Lynd died about twenty-six years ago.

He knows the heirs of the said Lynd; these names were Robert
128 Lynd, Henry Lynd, William Lynd, and Rosa Lynd, now the wife of R. C. Cammack. John Lynd lived and died in New Orleans. Deponent came to New Orleans five or six years after Mr. Lynd's marriage, and was in New Orleans at the time he died. Witness was very intimate with the family of Mr. Lynd. He was one of the ex'ors of the said John Lynd.

Witness being shown the document marked "A," filed on the 16th of June, 1846, states that he found it among the papers of Mr. Lynd, deceased; and he, witness, had the same in his possession for many years, and that he paid taxes for several years upon the land of which the said document was the evidence of title. Deponent was in the city at the time that Mr. Lynd purchased the land in question; that he often heard Mr. Lynd speak of it, who considered that he had
129 made a great bargain. Witness never endeavored to get patents for the said lands from the government of the U. States.

Cross-examined.

States that he paid the taxes mentioned to the State of Louisiana since the death of Lynd; that some six or seven years, more or less, after the death of Lynd, he handed over the aforesaid document of title to the family of Lynd, and that he has never had them since.

(Signed) EVARISSE BLANC.

Bernard Marigny, witness for petitioners, being duly sworn, states that he has known John Lynd, deceased, ever since the beginning of the government of the U. States, and also during the time of the
130 Spanish government. S'd Lynd married a sister of deponent's wife; that was his first marriage. He always lived in New Orleans. Witness was acquainted with Morales; he was the father of deponent's wife. States that he is perfectly acquainted with Morales' signature, having often seen him write.

Witness being shown the signature of Morales, in Document "A," already referred to, states that he recognizes thereto the said signature as being the true and proper signature of said Morales, in his handwriting. Morales held the office of intendent under the Spanish government. Witness also recognizes in said document the signature of Francisco Gutierrez de Arroyo, as being the true and genuine handwriting of the said de Arroyo; that the said de Arroyo was the
131 secretary of the intendent, and kept the records. Witness was also acquainted with the signature of Juan Francisco Armand de Courville, and being shown the said signature in the said document "A," recognizes it to be the proper signature and handwriting of the said de Courville; that the said de Courville was the contador of the intendency in Pensacola, where Morales was intendant, after the said Morales left the intendency of Louisiana.

Witness has seen many titles similar to that of Document A, and he recognizes that to be in the same form as the others which he has seen.

Cross-examined.

States that the stepdaughter of Morales was the first wife of
132 John Lynd, which lady died about the end of the Spanish, or the beginning of the American, government. Morales was intendent

of Louisiana at the time of the cession, and was so for many years previous. Morales continued to reside in New Orleans after the cession, to bring the affairs of the government to a close, and continued in New Orleans till the year 1806. Deponent states that Morales sold large quantities of public land at auction in the year 1803; he is not certain whether it was before or after the cession, but that will appear from the title. The Spaniards were at that time in possession of Baton Rouge and of Florida.

Examination-in-chief resumed.

Deponent being asked whether he was acquainted with the handwriting of Don Vicente Sebastian Pintado, and being shown
133 the signature of said Pintado, in said Document "A," states that he recognizes it to be the genuine handwriting and signature of said Pintado; that he knew Pintado intimately. Pintado was the deputy surveyor of Louisiana during the life of Laveau Trudeau, and after resignation of said Trudeau he was the surveyor in Florida.

(Signed) BERNARD MARIGNY.

Evarisse Blanc, being recalled, states that he knew John Lynd died during the time of the Spanish government. Deponent went to the North to learn the English language, and when he returned to New Orleans, Mr. Lynd was married to one of deponent's sisters.

(Signed) EVARISTE BLANC.

134 Etienne Mazureau, witness for plaintiffs, being duly sworn, states that he is well acquainted with the handwriting of Juan Ventura Morales, and well acquainted with him personally; and being shown the signature of said Morales in Document "A," says that he recognizes it to be the handwriting and genuine signature of said Morales. Morales was the intendent of the province of Louisiana and Florida; they both being under one government before the cession of Louisiana. He continued to be the intendent of Florida.

Witness also knew Arroyo personally, and is well acquainted with his signature; and he recognizes his signature attached to said Document "A" to be the genuine handwriting and signature of said Arroyo.
135 Arroyo was the minister of "real hacienda," or the royal domain.

Up to the time of West Florida being taken into the possession of the United States, which witness believes was in the year 1811, the Spanish government exercised sovereignty over it; that a short time before the United States took possession of West Florida, the Spanish authority had been overthrown by domestic revolutions.

Deponent is familiar with the form and manner of granting Spanish titles, and states that the title of Document "A" is in the usual form of such titles, but not in the form of gratuitous grants, as were in use before Morales was intendent, or before he was vested with the power of granting lands.

Cross-examined.

136 Deponent arrived in Louisiana on the 5th of March, 1804, and has resided in said State ever since. Very soon after his arrival he became acquainted with Juan Ventura Morales. Morales was the intendant of Louisiana at the time of the cession; Morales continued to reside in New Orleans a pretty long time after the cession.

The Spanish garrison also remained in New Orleans, being about fifteen hundred strong, and it was called the regiment of Louisiana; they occupied barracks at the corner of Toulouse and Chartres streets; all the Spanish officers remained here, as well as Morales.

Witness never heard of Morales making sales of public lands at auction. At that time the Marquis of Carcacaloa was also in New
137 Orleans; he had been military governor of Louisiana under the Spanish authority, and one of the commissioners under the cession.

Deponent states that he thinks it was in the year 1805 when Morales left New Orleans.

(Signed) MAZUREAU.

I, N. R. Jennings, commissioner duly appointed to take evidence in land cases, do certify Isidore Labatut, Evariste Blanc, Bernard Marigny, and Etienne Mazureau, appeared before me, and being duly sworn, made the foregoing depositions, to which they severally subscribed their names, in my presence.

In witness whereof I hereunto affix my hand and seal this 13th day of April, A. D. 1847.

(Signed) N. R. JENNINGS,
U. S. Commissioner.

138 NOTA.—The foregoing depositions are thus endorsed:

U. S. dist. court. "Offered in evidence, and filed April 21, 1847.

"N. R. JENNINGS, *Clerk.*"

"Offered on hearing of 'issues' before jury, and admitted May 31st, 1849.

"ROBERT M. LUSHER,
"*Deputy Clerk.*"

Third. The following memorandum of documents referred to, viz:

Treaty of 30th April, 1803, between the U. States and France. (White's Recop., vol. 2, p. 196.)

Treaty of cession from France to Spain, 3d Nov., 1762. (W. Recop., vol. 2, p. 531.)

Treaty from France to England, 3d November, 1762. (W. Re., 2, p. 533.)

139 Treaty between England and Spain, 10 February, 1763. (W. R., 2, p. 291.)

Proclamation of the King of England. (W. R., 2, p. 293.)

Treaty between G. Britain and Spain, Sep'r 3rd, 1783.

Laws, instructions, [and] &c., upon public lands. (V. D., p. 742.)

Treaty between the U. States and Spain of 20 of Oct., 1795. (W. R., 2, p. 199.)

Letter of L. Abadie. (1 Laws U. S., p. 442.)

Document signed Miguet, prepared for Mr. White. (W. R., 2, p. 508.)

This document contains extracts from the papers filed in the archives of Paris.

The proclamation of Casa Caloa and Lalieto upon the receipt of the orders of delivery. (W. R., 2, p. 193.)

The act of delivery from Spain to France. (W. R., 2, p. 134.)

140 Letter of Mr. Talleyrand to Mr. Monroe. (W. R., 2, p. 579.)
Protest of Casacalvo, March 31st, 1804. (W. R., 2, p. 546, 7.)
Martin's Hist. of Louisiana. (Vol. 2, p. 246, 7, 8.)
Treaty of 1819 between the U. S. & Spain. (W. R., 2, p. 208.)
American purchases. (Vol. 12, p. 15 to 81, 137 to 280.)
Letter of Pizarro to Mr. Irving, August 17th, 1817. (W. R., p. 524.)
Letter of Mr. Pinckney to Cevallos, Feb'y 17, 1803. (W. R., p. 544.)
Letter of Monroe to the French government, 18 May, 1803. (W. R., 2, p. 514.)
Refusal of Spain to sell the Floridas to Pinckney, April 7, 1802. (W. R., 2, p. 543.)
Answers to queries by Mr. Jefferson, 1803. (W. R., p. 691.)
Report of Pintado, Dec'r 9, 1822, and additional report of 20th of August, 1824. (W. Recor., vol. 11, p. 338 to 363.)
Order of the King of Spain, approving sales made, the order
141 dated 29th May, 1804, and the order dated 20th of Feb'y, 1805, requesting Morales to sell all he could. (W. R., 2, p. 346.)
The proclamation of President Madison on taking possession of W. Florida. (2 Martin's Hist'y of Louisiana, p. 296, 7, 8.)
Report of T. O. Cosby on land claims in Florida. (A. State Papers, vol. 18, p. 39 to 67.)
Regulations of Morales for the disposition of public lands. (American State Papers, vol. 18, p. 488 to 491. White's Recor., 2, p. 240.)
Martin's Hist. of Louisiana. (Vol. 2, from p. 193 to 199.)
Cession of Florida in 1763 by France to G. Britain, (ascribes the country ceded as the country east of the Mississippi River.) (1 American State Papers, p. 30.)
A list of the documents, treaties, and historical works referred
142 to by counsel for the pl'ff as historical evidence in this case.

NOTA.—The foregoing is thus endorsed:
Filed on the trial, April 21, 1847.

N. R. JENNINGS, *Clerk.*

Fourth. The following "affidavit of R. C. Cammack," filed April 21, 1847.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES & OTHERS. } U. S. D. C.

Robert C. Cammack, being duly sworn, states that he is the husband of Rosa Lynd, one of the heirs; states that he has had the original
titles to John Lynd filed in this case in possession for about four-
143 teen years, for the purpose of endeavouring to obtain the lands therein granted for the heirs, one of whom was his wife. That the papers annexed to the original title and filed with it in court are all the papers relative to said grant of land he has in his possession, or ever had. That if John Lynd ever had any other papers in relation to said grant, the same have long since been lost or mislaid.

The affiant has used all the means in his power to procure all the evidences of the title; that it has not been in his power to get the records of the Spanish government, or the documents deposited in the archives of said government upon the subject of the said grant of land, because as he has always been informed & believes that the said records and documents were taken out of the county by the Spanish officers,

144 and that they have most of them been lost or stolen from the archives of that government. That it would be impossible for him to get the warrants & orders preceding the said survey.

(Signed) R. C. CAMMACK.

Sworn to and subscribed before me this 21st day of April, A. D. 1847.

(Signed) N. R. JENNING, *Clerk.*

Close of evidence offered on the 21 April, 1847.

And afterwards, at the May term, A.D. 1847, to wit, on Friday, June 11th, 1847, was delivered, rendered, and filed the following opinion and judgment of the court, viz:

THE HEIRS OF JOHN LYND
vs.
145 THE UNITED STATES.

Opinion of the court.

This suit is brought under the act of 1824, revived by that of 1844.

The grant upon which the action is brought cannot be confirmed by this court under the provisions of these acts.

I have repeatedly decided in various cases, under the act authorizing these suits, that the courts to which these grants are to be submitted have no powers except such as have been delegated by the act itself. Nothing can be plainer than this proposition, otherwise they could have gone on without authority from Congress, to adjudicate upon the grants. This it is notorious they have refused to do, except so
146 far as to say that all grants made by Spain prior to the date of the treaty of St. Ildefonso, (1800,) were not valid against the United States. They have, it is true, said that grants made while Spain was sovereign de facto of the country between the Mississippi and Perdido were not absolutely void, & not beyond the control of Congress; but they have not said that the courts, without the aid of Congress, could declare them valid against the United States. On the contrary, they, as the judicial authority, following the action of Congress, have specifically declared that there is an intrinsic defect in the titles, and that they could not do otherwise than decide against them.

The act of 1824 expressly limits the action of the courts to grants made prior to the 10th of March, 1804. The grant before the
147 court was made in 1806, but it is said that the order of survey was made before the 10th March, 1804. If this were so, the court could doubtless proceed to take jurisdiction and decide upon its validity according to the rules laid down in the act of Congress. But how does this fact appear? The order of survey itself is not introduced in evidence, and there is no legal proof that it ever existed. The title made out by Morales in 1806, and the certificate of Pintado, shew that an order of survey had issued; but the insurmountable difficulty which the court is compelled to encounter in considering this recital and certificate is, that they were made or given by persons at a period when they could have no official character in the eye of the court. They were, so far as the powers of this court extend under the law, entirely
148 functi officio, and their acts have no legal validity whatever; the court has no authority to recognize an act performed either by Morales or Pintado as evidence of anything, for the manifest reason

that I cannot go beyond the 10th of March, 1804. If I can disregard this limitation for one purpose I can disregard it for all, and proceed, without restriction, to decide upon the validity of all grants made by Spain as late as 1810, when, in point of fact, the territory between the Mississippi and Perdido was first taken possession of by the United States, in accordance with the proclamation of President Madison.

The extension of the provisions of the old Missouri act of 1824, with the limitation of the action of the courts to the 10th of March, 1804, to
149 the territory between the Mississippi and Perdido, is an awkward piece of legislation, which, to one at all acquainted with the history of the delivery of the different portions of Louisiana to the United States, carries injustice upon its very face. The limitation in the act, when confined to Missouri, is perfectly just; but, when we reflect that the territory between the Mississippi and Perdido was never finally taken possession of by the United States until 1810, and that up to that time Spain remained in possession and in the exercise of all the powers of a sovereign de facto, it is certainly not equal justice to authorize a claimant, under a grant bearing date in 1804, to present his title to the court for conformation, while the claimant, under a grant bearing date in 1806, is positively debarred the exercise of the same privilege. But,
150 while I have taken the liberty to make a suggestion which the equity of the case so loudly calls for, it is certainly not the province of the court to dictate the legislation of Congress. The limitation in the act of 1804, when applied to the territory where the grant in question is situated, is an important omission; but it is an omission which this court has no power to supply.

The learned counsel for the plaintiffs has relied upon the principles of the laws of nations establishing the powers of a sovereign de facto as furnishing a rule under the provisions of the act of 1824, by which the title of his clients may be sustained; and the opinion of this court in the case of Reynes vs. the United States is relied upon to sup-
151 port the position. To this the answer is plain. The principles of the laws of nations, applied in the case of Reynes, were so applied to a grant which was clearly within the purview of the law, & over which the court was bound to exercise jurisdiction. But I certainly have no power to apply them to grants beyond the pale of the law and excluded by the very limitations of the law. This would be acting not under and in accordance with the law, but beyond the law, and upon the same principle the Supreme Court of the United States in the cases of Foster & Elam vs. Neilson, (2 Peters,) and Garcia vs. Lee, (12 Peters,) might have decided in favor of the grantees under Spain.

It is therefore ordered, adjudged, and decreed that the petition in this case be dismissed, and that there be judgment for the United States, with costs.

152 Whereupon was forthwith entered of record on the minutes of the court the following:

Decree.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } May term, 1847.

FRIDAY, *June 11th*, 1847.

The cause thus entitled having been submitted to the court on the 21st of April last, the judgment thereon was this day given.

And for reasons set forth and on file, it is ordered, adjudged, and decreed that the petition in this case be dismissed, and that there be judgment for the United States, with costs.

And be it further remembered that afterwards, at the same
153 May term, A. D. 1847, of the said court, to wit, on the twenty-fifth day of June, of said year, the plaintiffs came, by their attorneys, into court and deposited the following:

Petition for a rehearing.

To the Hon. T. H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana:

The petition of Henry I. Lind, Robert S. Lynd, William C. Lynd, & Rose Lynd, wife of Robert C. Cammack, respectfully represent that in the decree lately pronounced by this hon. court in their suit against the United States and others, they are advised and believe there was error in deciding that there was no legal proof of the existance of the order of survey on which the title of the petitioners was founded, prior to the 10th of March, 1804.

154 Petitioners allege that the rejection of the evidence introduced by them to prove the existance of said order on the 28th of September, 1803, and of the survey made in conformity therewith on the 9th of November, 1803, took them by surprise. They had no reason to believe that any objection would be made to the evidence until the trial of the cause; and had no expectation that any other or better evidence would be required of them until the decision of the cause was rendered by the court.

They allege that if they had not thus been taken by surprise, or had anticipated that other proof would have been required of them, they could have furnished such evidence of the existence of the order of survey at the date alleged in their original petition, and that the
155 survey was actually made at the date alleged, and that all the other proceedings were had in the manner of their title to the tracts of land described in their original petition, in the manner and form therein set forth, and as stated in the title given to their ancestor by Morales, by such evidence as would have been satisfactory to the court.

With this evidence before the court they believe the result would have been different, and the decree of the court in their favor.

They allege they were deprived of the opportunity of supplying the deficiency in their evidence caused by the rejection of their proof, owing to the fact of the objection not having been made before the trial, and the question of its rejection or reception not having been disposed of until the final decission of the cause.

156 Petitioners allege that since the trial of the case they have discovered evidence which will establish the existence of the order of survey and the survey in 1803.

That they are informed and believe that Philip Hicky, a witness living in this district, will prove that the order of survey was issued, and the land surveyed and appraised, in 1803, and that the appraisement was accepted by the father of petitioners in the same year.

Petitioners allege they were informed of this evidence subsequent to the trial of the cause.

They further allege they have discovered a certificate of Carlos Trudeau annexed to copies of the survey of the said lands, certifying that

the report of the said survey, and the plans annexed, were copied
157 at that date, to wit, on the 18th of June, 1804, from the records of the Spanish government; the said Trudeau being at that date the duly authorized officer of the Spanish government, and his certificate as such being entitled to full faith and credit; the said certificate and documents annexed being full proof that the said survey was made, and the report thereof made and recorded in the proper records of the Spanish government prior to the 18th of June, 1804.

Petitioners further allege that since the trial they have received information which leads them to believe that the original order of survey may be found at Havana, in the Island of Cuba.

That since the decision of the case there has not been time sufficient to enable them to have the records of the grants of land-titles in
158 Florida, which were carried to Havana from Pensacola when the Spanish authorities left this country.

They expect by searching those records to be able to find the original order of survey or authentic evidence of it.

Wherefore your petitioners pray, on account of the foregoing allegations, and the affidavit of R. C. Cammack herewith filed, that the cause be reheard before this hon. court, and that they be allowed an opportunity of introducing the important evidence they have discovered since the trial of the cause, and that on account of the surprise under which they laboured from the rejection of their evidence, that they be allowed to supply its deficiency by any other evidence pertinent to the
159 issues in the case; and that such further or other order may be made in the premises as this hon. court may seem meet; & your petitioners will ever pray, &c.

(Signed) ELMORE & KING
Solicitors for Comp'ts.

We conceive these causes are proper to be reheard touching the matter mentioned in the petition, if your honor shall think fit.

(Signed) ELMORE & KING,
Solicitors for Comp'ts.

And together with the foregoing petition was filed the following:

Affidavit of R. C. Cammack.

HEIRS OF JOHN LYND
vs.
UNITED STATES & OTHERS. } U. S. D. C.

Robert C. Cammack, being duly sworn, states in consequence of his wife's interest, and his relationship to the other claimants in the case of the Heirs of John Lynd vs. the United States & others, he has at their request attended principally to the prosecution of their claim for the land in controversy.

He states that he had no reason to believe that the court would
160 reject the evidence of the order of survey, the survey, the report thereon, the appraisement, and the acceptance, and other proceedings in relation to the said land. Had he been aware of the necessity of establishing those things by other proof, he believes he could have done so by evidence which would have been satisfactory to the court.

That since the trial of the case he has been informed, and believes he

can prove by Philip Hickey, esq., that the order of survey was granted, and the survey and appraisement was made, prior to the year 1804.

That he was not aware either of the necessity or the existance of this evidence at the time of the trial.

He further states that since the trial he has discovered in the
161 possession of Bringier, who holds the office of ,
a certificate of Carlos Trudeau, who was surveyor general, under the government of Spain, of the province of West Florida, and keeper of the records of all surveys made in that province, certifying that he had copied from the records in his office of survey, the plans and the report of the surveyor and proceedings thereon of the claim of the petitioner's father on the 18th of June, 1804; that the said certificate is in the genuine handwriting of the said Trudeau, and is annexed to an exact copy of the plans and report filed in this case.

He further states that from information he has obtained since the trial, he has reason to believe that the original order of survey, or an authentic copy of it, may be found in Havana, and that if a rehearing of the case is granted he may be able to procure it by the time
162 the case can be again tried.

(Signed) R. C. CAMMACK.

Sworn and subscribed before me this 23d June, A. D. 1847.

(Signed) C. B. BEVERLY, *Justice.*

NOTA.—The foregoing affidavit is thus endorsed:

Offered in evidence by pl'ffs before jury. Admitted and filed May 31st, 1849.

ROB'R. M. LUSHER,
D'y Clerk.

Whereupon at the said May term, to wit, Friday, June 25, 1847, was recorded on the minutes of the court the following:

Order.

HEIRS OF JOHN LYND
vs.
163 THE UNITED STATES. } 120.

Upon motion of Elmore & King, of counsel for complainants in this cause, and presenting a petition for a rehearing in the said cause, together with the affidavit of the plaintiffs, the court ordered the petition to be filed, and notified the plaintiffs that argument thereon would be heard.

And afterwards, at the May term, 1848, of the said court, to wit, on Friday, May 19th, 1848, was recorded on the minutes of the court, the following:

Motion to submit certain issues to a jury, viz:

HEIRS OF JOHN LYND
vs.
THE UNITED STATES.

On motion of Elmore & King, of counsel for complainants, it
164 is ordered by the court that the defendants shew cause, if any

they have, on Thursday next, at 9 a. m., why the following issues of disputed facts in controversy in this case should not be tried by a jury according to the 2d section of the act of the 26th May, 1824, enabling claimants of land within the State of Missouri and the Territory of Arkansas to try the validity of claims, &c., and the acts amending the same:

1st. Was there an order of survey issued by the duly authorized officers of the Spanish government, directing the survey of thirty two thousand and twenty-five arpents, or any other quantity, of land in the district of Baton Rouge, for John Lynd, deceased, the father of
165 the complainants, on or about the 26th day of September, 1803?

2d. Were the surveys, figurative plans of which are annexed to complainants' bill, made under the said order?

3rd. Was there a survey made under the proper authorities of the Spanish government of thirty-two thousand and twenty-five superficial arpents of land for said John Lynd in the months of October or November, or prior to the 20th of December, 1803?

4th. Are the plans and surveys of thirty-two thousand and twenty-five arpents of land, and the report of Pintado, the surveyor, annexed to the complainants' bill, genuine documents made by the officers purporting to have executed them?

166 5th. Were the tracts of land, the figurative plans of the surveys of which are annexed to complainants' bill, surveyed by Pintado at the time they purport to be by the report, or at any time prior to the 10th of March, 1804?

6th. Is the title annexed to complainants' bill, and purporting to have emanated from Morales, genuine?

And it is further ordered, both parties consenting, that the following additional issue be submitted to a jury:

7th. Did the said John Lynd pay the Spanish government for the said thirty-two thousand and twenty-five arpents of land?

167 Service of the above accepted.

(Signed) THOMAS I. DURANT,
U. S. Att'y Dist. La.

And further, at the same term, on the 25th May, 1848, was entered of record the following:

Continuance.

HEIRS OF JOHN LYND }
vs.
THE UNITED STATES. }

The rule entered in this case on the 19th inst. was, by consent of counsel, continued until to-morrow morning at 9 o'clock.

And further, at the same term, on the 26th May, 1848, was recorded the following:

Submission of issues.

HEIRS OF JOHN LYND }
vs.
168 THE UNITED STATES. }

The rule or motion to submit certain issues in this case to a jury came

up to-day for hearing, the counsel on both sides being present; when, after hearing argument, the court took the said motion under advisement, together with the original application made for a rehearing of the cause.

And thereupon, at the same term, on the 29th day of May, A. D. 1848, was rendered by the court and recorded the following:

Order of "issues."

HEIRS OF JOHN LYND
vs.
THE UNITED STATES.

169 Having maturely reconsidered the order of the court of the 29th June, 1847, granting a rehearing of this cause, and having had under advisement the "issues" proposed by the auttorney for the plaintiffs to be submitted to a jury:

The court this day reaffirmed said order of the 29th of June, 1847, and also ordered that the following "issues" be submitted for trial to a jury, to wit:

First. Whether there was or not an order of survey issued on or about the 26th day of September, 1803, by the duly authorized officers of the Spanish government, directing the survey of thirty-two thousand and twenty-five (32,025) arpents, or any other quantity, of land in the district of Baton Rouge, for John Lynd, deceased, the father of the complainants.

170 2d. Whether the surveys, figurative plans of which are annexed to complainants' bill, were or were not made under the said order.

Third. Whether there was or was not a survey made under the proper authorities of the Spanish government of thirty-two thousand and twenty-five superficial arpents of land for the said John Lynd, in the month of October or November, or prior to the 20th of December, 1803.

Fourth. Whether the plans and surveys of thirty-two thousand and twenty-five arpents of land and the report of Pintado, the surveyor, annexed to the complainants' bill, are or are not genuine documents made by the officers purporting to have executed them.

171 Fifth. Whether the tracts of land, the figurative plans of the surveys of which are annexed to complainants' bill, were or were not surveyed by Pintado, at the time at which, by the report, they purport to have been surveyed, or at any time prior to the 10th of March, 1804.

Sixth. Whether the title annexed to complainants' bill, and purporting to have emanated from Morales, is or is not genuine.

Seventh. Whether the said John Lynd did or did not, pay the Spanish government for the said thirty-two thousand and twenty-five arpents of land.

And afterwards, at the May term, A. D. 1849, of the said court, to wit, on the 30th of May last, the plaintiffs appeared, by their at-
172 torney, and—leave had—filed in the clerk's office the following:

Amended bill.

To the hon. the judge of the district court of the United States for the eastern district of Louisiana:

In the matter of the Heirs of John Lynd vs. the United States, due

permission have been first obtained from this honorable court to amend the original bill of complainants, they make the following allegation as an amendment to the original bill, to be considered as inserted in the said original bill, after the word Lynd in the eleventh line of the first page of the said bill, to wit: "Who was at the time a resident of Louisiana & continued to be so until the change of the government
173 to the United States, and for a long time thereafter."

(Signed) ELMORE & KING,
Solicitors for Compl's.

And on the same day, viz., Wednesday, May 30th, 1849, was recorded on the minutes of the court the following:

Motion and order.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } 120.

On motion of Mess. Elmore & King, of counsel for complainants, it is ordered that a special venire issue to the marshal to secure the attendance in court to-morrow, at 10 a. m., of twenty jurors, to form a jury for the trial of the issues of fact joined herein.

Whereupon was forthwith issued from the clerk's office the
174 following:

Venire facias.

The President of the United States of America to the marshal of the eastern district of La., or to his lawful deputy, greeting:

You are hereby commanded to summon twenty-four good and lawful persons to be and appear at the district court of the United States of America for the eastern district of Louisiana, to be holden at the city of New Orleans, in the district aforesaid, at ten o'clock a. m., on the thirty-first day of May, in the year of our Lord one thousand eight hundred and forty-nine, to serve as special petit jurors for the May session, 1849, of the said court.

175 Herein fail not, on pain of the penalty that will fall thereon.

By order: (Signed) ROBT. M. LUSHER,
Dep. Clerk.

T. B. Lee, J. B. Heartt, Manuel Elliott, H. F. Cantzon, C. C. Sampson, Albert Nye, R. S. Fost, Theodule Montreuil, William A. Violett, Wm. J. Dewy, James E. North, John A. Furnel, J. Whitney, R. F. Nichols, L. D. C Wood, M. Judson, H. Delpit, Jules David, J. B. Hoatte, J. E. Jolly, Nicholas Barrois, Robert Hall. J. O. Nixon, P. Longis.

Whereon was duly made the following:

Marshal's return.

Rec'd May 30th, 1849, and on the 31st May, '49, this venire returned into court after the within-named twenty-four persons being summoned
176 according to law. (Vide folio 85.)

(Signed) CHAS. A. LABUZAN,
Dep. Marshal.

And thereafter, at the same May term, 1849, to wit, Thursday, May 31st, 1849, was recorded on the minutes of the court the following:

Opening of the trial of "issues."

This being the day fixed for the hearing before a jury of the seven "issues of fact," ordered to be so tried on the 29th of May, 1848, the following named jurors were empanelled and sworn to try the same, viz.: L. Dufilho, F. Fabre, P. D. Henri, J. Kelso, L. Arnoult, T. B. Lee, T. B. Hearth, R. S. Yost, John A. Turnell, Jules David, J. B. Hoatte, and J. E. Jolly.

W. W. King, esq., appearing on behalf of the plaintiffs, and
177 Thos. J. Durant, esq., with the U. S. dist. attorney, for the defendants.

Evidence was offered and the admissibility thereof argued at length, when, at a late hour, the court adjourned the further hearing until tomorrow morning at 10 a. m.

And be it known that the documents this day offered, or proposed to be offered, by the plaintiffs as evidence before the jury are the following, viz:

Firstly. The testimony of Evariste Blanc, taken April 13th, 1847, offered to prove cultivation and payment of taxes; objected to & objections argued and overruled & the deposition admitted, (which see on page 59 of this transcript.)

Whereupon was tendered, signed, and filed the following:

178 *Bill of exceptions, viz.*

HEIRS OF JOHN LYND }
vs.
THE UNITED STATES. }

Before the Honorable Theodore H. McCaleb, judge of the district court for the eastern district of Louisiana; May term, 1849.

Be it remembered that on this thirty-first day of May, 1849, on the trial before the court and jury of the issues made out of chancery, the counsel of petitioners offered to read in evidence to the jury the testimony of E. Blanc, to prove possession of the land and payment of taxes thereon; the att'y of the United States objected to the introduction of the evidence as being irrelevant to the issues. But the court overruled the objection and allowed the evidence to be read,
179 whereupon the att'y of the United States excepted and tenders this as a bill of exceptions, praying the same may be signed and made part of the record.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Secondly. The plaintiffs offered the depositions of B. Marigny and E. Mazureau, taken April 13th, 1847, (which see on pages 60–64 of this transcript,) which were admitted and read.

Thirdly. The plaintiffs offered the affidavit of R. C. Cammack, filed June 25th, 1847, and already copied on page 76–78 hereof; also the following additional affidavit of R. C. Cammack, which, though objected to, was admitted, and read as follows, viz.:

180 HEIRS OF JOHN LYND } U. S. D. C.
vs.
THE UNITED STATES. }

R. C. Cammack, being duly sworn, states that he is the husband of Rose Lynd, one of the claimants; that in addition to the affidavits previously made by him and filed in this case, he now states that since the rehearing was granted in this case, that he has caused the archives in Havana to be searched for the original order of survey, and the survey mentioned in the petition in this case; that he has caused the records at Baton Rouge to be searched for the same papers; & that he has made inquiries, and caused every depository of papers to be searched where it was thought that said papers were likely to be
181 found, but that he has not been able to find said original papers, or to obtain any information respecting them.

(Signed) R. C. CAMMACK.

Sworn to and subscribed the 31st May, 1849, in open court and before,
ROBT. M. LUSHER, *Dep. Clerk.*

NOTA.—The foregoing affidavit is thus endorsed:
Offered in evidence by plaintiffs, before jury. Admitted and filed Mai 31st, 1849.

ROBT. M. LUSHER, *D'y Clk.*

Fourthly. The plaintiffs proposed to offer Document "A," already copied on pages 15–38 of this transcript, but the same being objected to by the defendants, it was withdrawn.

182 Fifthly. The plaintiffs offered the deposition of Philip Hickey, taken February 28, 1848, which, being admitted, was read as follows, viz:

HEIRS OF JOHN LYND }
vs.
THE UNITED STATES. }

Upon this day, February 28th, 1848, the plaintiffs, represented by their attorney, W. W. King, esq., and the defendants, by Thos. J. Durant, U. States district attorney, appeared before me to take the testimony of a witness on behalf of plaintiffs, to be used on the trial of this cause, entitled the Heirs of John Lynd vs. the United States.

Philip Hicky, witness for plaintiffs, being duly sworn, declares that he resides in the parish of East Baton Rouge, about one hundred and twenty-four miles from the city of New Orleans, and has resided there for about sixty-one years, with the exception of three
183 years, to wit, from the years 1793 to 1795, when he resided in the city of New Orleans.

Witness states that he was well acquainted with Pintado and his handwriting, and being shewn the signature of Pintado to the report which is annexed to the title, recognizes it to be the genuine signature of said Pintado.

Witness states that he was well acquainted with John Lynd; he first knew him in Natchez, before he removed to New Orleans, which he thinks was as early as the year 1800, altho' he cannot state positively. Witness recollects having seen Mr. Lynd at the residence of witness' father, in the year 1803; he was there with a number of others, who

came for the purpose of locating lands, sales of which they had obtained from the Spanish government.

184 Witness does not recollect of his being appointed appraiser of the land in this particular instance, but that he was about the year 1803 very often named appraiser, sometimes by the individual and sometimes by the government. Witness has no recollection of having signed this particular report; that he could not say without seeing his signature whether he had signed it or not; that the persons who are mentioned in the report as appraisers he was acquainted with personally, and knows that they were individuals frequently called upon to act as appraisers. He knew the witnesses also who signed the report; the [the] said appraisers and witnesses are now all dead.

Witness being asked if he knew the price at which appraisements of land were usually made, says he cannot state precisely, but he

185 knows that they were very low, generally about sixteen cents an arpent.

Witness has understood that Mr. Lynd was dead. His first wife, witness knows, was the daughter of Morales, the intendant.

The attorney of the United States, Thomas J. Durant, being present, says that he objects to this examination because the case has already been decided by a judgment in favor of the United States, and no rehearing ever granted in form binding on the defendants, waiving objections as to the manner and form of taking it.

(Signed) PHILIP HICKY.

I, N. R. Jennings, duly appointed commissioner to take testimony in land cases, do certify that the foregoing is the true testimony of the witness, Philip Hicky, as taken down by me in writing; and that

186 the said testimony, being carefully read over to the witness, was by him subscribed in my presence.

In witness whereof I hereunto set my hand and seal this 28th day of February, A. D. 1848.

[SEAL.] (Signed) N. R. JENNINGS,
Commissioner.

Sixthly. The plaintiffs offered the deposition of Louis Bringier, taken April 8th, 1848, which was admitted and read as follows:

HEIRS OF JOHN LYND }
vs.
THE UNITED STATES. }

Be it remembered that on this 8th day of April, A. D. 1848, the plaintiffs, represented by their counsel, W. W. King, esq., and the defendants, represented by the district attorney, Thomas J. Durant, appeared before me. The plaintiffs introduced a witness, Louis

187 Bringier, whose testimony is to be used on the trial of this cause.

Louis Bringier, being by me duly sworn, doth depose as follows:

That he is going on sixty-six years of age; that he is a native of Louisiana; that he has had his residence nearly the whole of the said time in Louisiana; a portion of the time, to wit, about three years, he has his residence in Arkansas, and a portion of the time he was a prisoner in Mexico.

States that he is now surveyor of the parish of Orleans and ex officio surveyor general of the State, an office which he has filled for more than twenty years; states that the original, of which the copy filed on the first

of April, 1848, purports to be a true copy, was delivered to him by
188 his predecessor, in the office of surveyor general, as a part of the archives of that office. Carlos Trudeau was the surveyor general of the province of Louisiana under the Spanish government; the State of Louisiana purchased from said Trudeau's heirs his papers, and created the office of surveyor general to take charge of them.

Witness has seen the signature of Carlos Trudeau to the original of the aforesaid copy, and being acquainted with the signature of said Trudeau, states that the signature hereto is genuine; states that the said original is all of it in the handwriting of said Trudeau; that he, witness, is well acquainted with Trudeau's handwriting.

Deponent states that he cannot deliver up the original of which the said copy is filed, because the original belongs to the State, and
189 he cannot therefore suffer it to be removed from his possession.

The district attorney being present here objects to all of the foregoing testimony on the ground that the suit is terminated, and not in a condition for testimony to be received, and makes no other objections.

(Signed) L. BRINGIER,
Surveyor General.

I, N. R. Jennings, duly appointed commissioner to take testimony in land cases, do certify that the foregoing is the true deposition of Louis Bringier; that the same was taken down by me writing in answer to the interrogatories propounded to the said witness; which said depositions, being carefully read over to witness, was by him signed before me.

190 Witness my hand and seal this 8th day of April, A. D. 1848.
(Signed) N. R. JENNINGS,
U. S. Com'ner.

Seventhly. The plaintiffs proposed to offer a certain document, of which the original is, as of record in the office of the surveyor general of Louisiana, marked No. 44 I, but objections were raised to the admissibility of the same in evidence.

Pending which the court adjourned.

And be it further known, that on the succeeding day, to wit, May term, 1849, Friday, Jan. 1st, 1849, the presentation of documents in evidence was continued as follows, viz:

Seventhly. Doc. "No. 44, I," embracing, on page 1, plan No. 1748,
191 tracts Nos. 1, 2, & 3, corresponding identically with that appearing on page 16 of this transcript, and having the following subscription:

"En la oficina de agrimensura general se tomo razon del presente plano sentado en el libro No. 6, fol. 8, al plano No. 1748 de apeos Junio diez y ocho de mil ocho cientos y quatro años.

"Para copia. CARLOS TRUDEAU, *Agr.*"

This reference relates to the transcript in the old suit, 120.

Page 2. Plan No. 1749, tracts Nos. 4 & 5, corresponding identically with that on page 17 of this transcript, and having the following subscription:

"En la oficina de agrimensura general se tomo razon del presente plano, sentado en el libro No. 6, fol. 9, al plano No. 1749.

192 "Para copia. Junio diez y ocho de mil ochocientos y quatro años.
"CARLOS TRUDEAU, *Agr.*"

This is a reference to transcript suit 120.

Page 3d. Plan No. 1750, tract No. 6, corresponding identically with that on page 18 of this transcript, and having the following subscription:

"En la officina de agrimensura general se tomo razon del presente plano, sentado en el libro No. 6, folio 10, el plano No. 1750. Junio diez y ocho de mil ocho cientos y quatro años.

"Para copia.

"CARLOS TRUDEAU, *Agr. R'l.*"

Page 4th. Plan No. 1751, tracts No. 7, 8, & 9, corresponding identically with that on page 19 of this transcript, and having the following subscriptions:

"En la oficina de agrimensura general se tomo razon del presente plano, sentado en el libro No. 6, fol'o 11, al plano No. 1751,
193 Junio diez y ocho mil ocho cientos y quatro años.

"Para copia.

"CARLOS TRUDEAU, *Agr. R'l.*"

Page 5th. Plan No. 1752, tracts Nos. 10 & 11, corresponding identically with that on page 20 of this transcript, and under which begins the diligencia of Don Vicente Sebastian Pintado, (on page 21 of this transcript.)

And on pages 5, 6, 7, 8, 9, 10, & 11, a copy of the said diligencia or process-verbal of Don Vicente Sebastian Pintado, appearing on pages 21 and 27 of this transcript, all as portions of doc. marked "A," annexed to plaintiffs' petition; and added thereto, pages 11 & 12, the following certificates, which were admitted and allowed to be read before the jury, as follows, viz:

194 "Don Carlos Trudeau, agrimensor real y particular de la provincia de la Louisiana, &c.

"Certifico los onze planos y la relacion que anteceden copiados de los originales que se hallan agregados en el expediente del asunto, y registrado en la oficina de agrimensura general, sentado en el libro No. 6 desde folio 8, hasta folio 14, y en virtud del decreto del señor intendente gen'l, enfecha dos de Mayo ultimo pasado, doy la presente a 18 Junio de 1804.

"CARLOS TRUDEAU, *Agr. R'l.*"

I certify the foregoing eleven plats of surveys in favor of John Lynd, and the proces-verbal thereof, with the certificate of Don Carlos Trudeau, to be true and exact copies of document marked No. 44, letter I, and deposited in the surveyor general's office under my charge.

195 In testimony whereof I have hereunto set my hand and seal of office, in the city of New Orleans, this 25th day of March, 1848, year of our Lord, and the seventy-third of the independence of the U. S. of America.

(Signed) L. BRINGIER,
Surveyor General.

NOTA.—The foregoing doc. is thus endorsed:

Certificates herein offered in evidence by plaintiffs before jury; objected to; argued; objections under advisement. May 31st, 1849. Reading allowed, June 1, 1849. Read in evidence before jury.

ROBT. M. LUSHER,
Dep. Clerk.

Together with the following:

196 *Translation of the former of said certificates, viz.*

Don Carlos Trudeau, surveyor general and special of the province of Louisiana, &c., certify that the eleven plans, and the report which precede them, are copied from the originals, and are annexed to the proceedings in this case, and are registered in the office of the surveyor general, in book No. 6, from folio 8 to folio 14; and by virtue of the decree of his excellency the intendent general, under date of the 2d of May last, I deliver the foregoing certificate on the 18th June, 1804.

(Signed) CARLOS TRUDEAU, *Sur. Gen.*

I certify the foregoing to be a true translation from the Spanish of the certificate of Carlos Trudeau.

(Signed) L. DUVIGNEAUD,
Interpr. U S. Dist. Court.

197 Whereupon was tendered, signed, and filed the following:

Bill of exceptions to doc. No. 44, I.

THE HEIRS OF LYND
vs.
THE UNITED STATES.

District court of the United States for the eastern district of Louisiana.—Present, the Hon. Theo. H. McCaleb, judge.—May term, 1849.

Be it remembered that on the trial of this cause, on Friday, the 1st day of June, 1849, before the court & jury, the counsel of petitioners offered to read in evidence to the jury a document marked No. 44, I, being a copy made by L. Bringier, surveyor general of Louisiana, of a document signed by Carlos Trudeau, "agrimensor general," dated
198 18th June, 1804, the counsel of the United States objected to the reading of said document on the ground that it was illegal, but the court overruled the objection and suffered the document to be read. Whereupon the counsel of the United States excepts, and tenders this as a bill of exceptions, praying that the same may be signed and made part of the record.

[SEAL] (Signed) THEO. H. McCALEB,
U. S. Judge.

Eighthly. The plaintiffs offered the oral testimony of Jno. L. Daniel, which was taken down in the words following, viz:

John L. Daniel, esq., sworn, has examined almost every claim for lands in Louisiana; is very familiar with all such; witness is likewise familiar with the modes in which the Spanish officers did business
199 in relation to the land matters; his knowledge derived from examination of papers, as he has already said, relating to claims for land. Never surveyed lands himself, but has been a great deal with surveyors. From such associations, thinks he could come within a month or two at an accurate estimate of the time needed for a survey; could tell what time would be needed for a survey of land claim in Florida, for instance. Has been on the river Amite; it would be difficult, in some places, to survey these.

Looking at the plans in document "No. 44, I," witness knows but litle of the lands of which surveys are found therein; has never been on

them. Witness has been with surveyors when they were surveying lands very often and a great deal.

200 As to lands such as are represented in said document "No. 44, I, (excepted to,) witness thinks that it would take (Spanish mode) between the issuing of the order of survey and the execution and return thereof, (judging from what it has usually taken,) about a year or eighteen months, shortest time. Never saw any that took place in a shorter time. If done within six months, it would be with more than usual dispatch.

No cross-questions propounded.

Attest:

(Signed) ROBT. M. LUSHER,
Dep. Clerk.

Whereupon was tendered, signed, and filed the following:

Bill of exceptions.

HEIRS OF JOHN LYND }
vs.
THE UNITED STATES. }

201 District court of the United States for the eastern district of Louisiana, before the Hon. Theodore H. McCaleb, judge, May term, 1849.

Be it remembered that on this Friday, 1st June, 1849, on the trial of this cause before the court and jury, a witness for the petitioners, John L. Daniel, being on the stand, the counsel for petitioner offered to ask said witness how long it would probably take to make and return a survey of the eleven tracts of land mentioned in the Document I, already offered in evidence and objected to. Whereupon the counsel of the United States objected to said question as being illegal, but the court overruled the objection, and allowed the question to be put, the counsel of the United States excepted to the admission of said testimony, and tenders this as a bill of exceptions, which he prays may be signed

202 and made a part of the record.

(Signed) THEO. H. McCALEB,
U. S. Judge.

Ninthly and lastly. The plaintiffs now again proposed to offer in evidence "Doc. A," (already copied at length on pages 15–38 of this transcript,) which, after argument on the objections raised thereto by the defendants, was admitted and read to the jury, (per the translation thereof on pages 39–57.)

Whereupon was tendered, signed, and filed the following:

Bill of exceptions.

THE HEIRS OF JOHN LYND }
vs.
THE UNITED STATES. }

203 In the district court of the United States for the eastern district of Louisiana, before the Honorable Theodore H. McCaleb, judge, May term, 1849.

Be it remembered that on this Friday, the first day of June, 1849, on

the trial of this cause before the court and jury, the counsel for petitioners offered and read in evidence to the jury the document marked "A," filed with this petition, and purporting to be signed by Juan Ventura Morales in Pensacola, on the twelfth day of July, 1806. the counsel of the United States objected to the reading of said document on the ground that it was illegal, but the court overruled said objection, and allowed said Document A to be read. Whereupon the counsel of the United States excepted, and tenders this as his bill of exceptions,
204 praying that the same may be signed and made a part of the record.

[SEAL] (Signed) THEO. H. McCALEB,
U. S. Judge.

Close of evidence.

And thereupon, on the said Friday, June 1st, 1849, May term, 1849, was duly entered of record the following minute of the—

Trial and submission of issues.

The hearing of the "issues" herein and of the argument on the admissibility of the various documents offered as evidence by the plaintiffs was this day resumed before the court and jury. The court admitting said documents, the defendants thereupon tendered successively three several bills of exceptions, which were signed by the court and filed of record.

205 The jury having then been recalled and the panel found complete, evidence was read to them and argument of counsel read, after which, under charge from the court, and with Thos. B. Lee appointed their foreman, they retired to consider of their verdict on the following issues, to wit:

First. Was there, or was there not, an order of survey issued on or about the 26th day of September, 1803, by the duly authorized officers of the Spanish government, directing the survey of thirty-two thousand and twenty-five (32,025) arpents, or any other quantity, of land in the district of Baton Rouge, for John Lynd, deceased, the father of the complainants?

206 Second. Were the surveys, figurative plans of which are annexed to complainants' bill, made under the said order or not?

Third. Was there, or was there not, a survey made under the authority of the proper officers of the Spanish government, of 32,025 superficial arpents of land for the said John Lynd, in the month of October or November, or prior to the 20th of December, 1803?

Fourth. Are the plans and surveys of 32,025 arpents of land and the report of Pintado, the surveyor, annexed to the complainants' bill, genuine documents made by the officers purporting to have made them, or are they not?

207 Fifth. Were the tracts of land, the figurative plans of the surveys of which are annexed to complainants' bill, surveyed or not, by Pintado, at the time at which, by the report, they purport to have been surveyed, or at any time prior to the 10th of March, 1804?

Sixth. Is the title annexed to complainants' bill, and purporting to have emanated from Morales, genuine, or is it not?

Seventh. Did or did not the said John Lynd pay the Spanish government for the said 32,025 arpents of land?

After consultation, the jury returned into court with their verdict in the words and figures following, to wit:

The jury makes the answer in the affirmative to all the issues.

June 1st, 1849.

208 (Signed) THOS. B. LEE, *Foreman.*

Which verdict was by the court ordered to be recorded.

And subsequently, at the same term, to wit, on Saturday, June 2d, 1849, this cause was taken up by consent; when the plaintiffs offered in evidence, (as attested on the docket:)

1°. The finding of the jury on the "issues" yesterday submitted to them, with the record of the evidence and proceedings had before them.

2°. The deposition of Isidore Labatut, April 13th, 1847, already copied on page 58 of this transcript.

209 Whereupon was entered of record on the minutes of the court of said June 2d, 1849, the following:

HEIRS OF JNO. LYND
vs. } 120.
THE UNITED STATES.

Judgment pro confesso, discontinuance, and final submission.

This cause was to-day taken up to be heard before the court; W. W. King, esq., appearing for the complainants, and Thos. J. Durant, esq., for the defendants.

Whereupon, on motion of complainant's solicitor, shewing to the court that Thomas W. Scott, David Thomas, Samuel McManus, and John Carr have all been served with copies of the petition, but have not answered thereto, it is ordered that judgment pro confesso be and the same is hereby entered up against said parties defendant; ——

210 and —— on further motion of the same, it is ordered that, as against John McQuinn, Westley Waddle, S. W. Hackney, and Beverly Dunn, parties defendant who have abandoned the lands in controversy and left the country, a discontinuance be and the same is hereby entered up; and after evidence offered and argument, the court took the cause under advisement.

And further at the same term, and on Wednesday, June 13th, 1849, was rendered and duly recorded the following:

Judgment.

Which was engrossed, signed and filed on the 14th June, 1849, in the words and figures following, to wit:

HEIRS OF JOHN LYND
vs. } No. 120, land docket.
THE UNITED STATES.

211 The court, having taken this case under consideration, and having examined the evidence and the finding of the jury upon the issues of fact presented to them, is now of the opinion that the title of the complainants to the land in controversy is valid; that, under

the laws, usages, and customs of the Spanish government, the complainants were entitled to the land and might have perfected their title thereto, if the sovereignty of the country had not been transferred, and that their title was protected by the treaty between the United States of America and the French republic on the 30th of April, 1803; further, that the case is one provided for by the act of Congress of the 26th of May, 1824, revived and continued in force by the act of 17th of June, 1844, and that John Lynd, the father of the present complainants,
212 who are his heirs, was, at the date of his grant, a resident of Louisiana.

It is therefore ordered, adjudged, and decreed that the complainants, Henry J. Lynd, Robert S. Lynd, William C. Lynd, and Rose Lynd, wife of R. C. Cammack, have judgment against the United States for the thirty-two thousand and twenty-five superficial arpents of land described in the plans and surveys annexed to the original petition and marked Exhibit A; the said land being particularly described in said plans and surveys, and also in the copy of said plans and surveys certified to by L's Bringier, surveyor general of Louisiana, offered in evidence in this case, and endorsed No. 44, I.

213 And it is further ordered, adjudged, and decreed that if, after a proper survey made, it be ascertained that any of the lands above described shall have been sold or otherwise disposed of by the United States, said complainants shall be, and they are hereby, authorized to enter a like quantity of the public lands of the United States, as provided by the eleventh section of the act of Congress approved on the 26th of May, 1824.

Judgment rendered June 13th, 1849.

Judgment signed June 14th, 1849.

[SEAL.] (Signed) THEO. H. McCALEB,
U. S. Judge.

And thereafter and finally, at the same term, on the said 14th day of June, A. D. 1849, was moved for in open court, granted, and recorded, the following:

Order of appeal.

214 East. dist. of Louisiana, before the Hon. T. H. McCaleb.

On motion of Logan Hunton, attorney of the United States for the district aforesaid, and Thomas J. Durant, on the same behalf, and on giving the court to understand and be informed that the United States are injured and aggrieved by the judgment of this honorable court, against them rendered at this term in the matter of the Heirs of John Lynd versus the United States, and desire to appeal therefrom:

It is thereupon ordered by the court that an appeal be allowed in favor of the United States from the judgment aforesaid, returnable to the Supreme Court of the United States at the next term thereof
215 after the date of this order.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

I, Needler R. Jennings, clerk of the district court of the United States, sitting at New Orleans, in and for the said district, do hereby certify that the foregoing one hundred and seven folios, including plans on folios 16, 17, 18, 19, 20, contain and form a true, faithful, correct, and

complete transcript of all the proceedings, process, pleadings, documents, and other matters on file and of record in a certain cause in chancery, wherein the heirs of John Lynd are plaintiffs, and the United of America, defendants, No. 120 of the land docket of said court.

In testimony whereof I have hereunto set my hand and affixed
216 the seal of said court, at the city of New Orleans, this first day of September, one thousand eight hundred and forty-nine, and the 74th year of American independence.

[SEAL.] N. R. JENNINGS,
Clerk U. S. District Court Eastern Dist. of Louisiana.

I, Theodore H. McCaleb, judge of the district court of the United States for the eastern district of Louisiana, do certify that N. R. Jennings, who subscribed the above certificate, was, at the time of signing the same, and is now, the duly appointed and legally authorized clerk of said court; that full faith and credit are due and ought to be given to all his attestations as such clerk; and that his above certificate is
217 in due form of law.

Witness my hand and seal, at New Orleans, this 24th day of September, A. D. 1849.

[SEAL.] THEO. H. McCALEB,
U. S. Judge.

The United States of America, to Henry I. Lynd, Robert S. Lynd, William C. Lynd, and Rose Lynd, wife of R. C. Cammack, heirs, &c., of John Lynd, dec'd, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to an order of appeal granted on the fourteenth day of June, 1849, by the district court of the United States in and for the eastern district of Louisiana, in a
218 certain cause in chancery, under the acts approved May 26th, 1824, and June 17th, 1844, entitled No. 120, the Heirs of John Lynd vs. the United States, wherein the said United States of America are appellants, and you are appellees, to show cause, if any there be, why the judgment rendered against the appellants as in said order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness hereto my hand and the seal of the said court, at the city of New Orleans, this twenty-fourth day of September, A. D. 1849.

[SEAL.] THEO. H. McCALEB,
Judge of the U. S. District Court Eastern District of Louisiana.

ELMORE & KING, *Att'ys.*

Attest: ROB'T M. LUSHER, *D'y Cl'k.*

219 Eastern district of Louisiana, United States district court.

HEIRS OF JOHN LYND *vs.* THE UNITED STATES. } Orig., No. 120.—Citation of appeal.

Marshal's return.

Rec'd Oct. 9, 1849, and on the 16th October, 1849, served a copy of the within citation of appeal on R. C. Cammack, esq., representing one

of the heirs, and at the time accepting service for all of the heirs, by handing the same to him in person, at New Orleans.

M. M. THOMAS,
U. S. D'y Marshal East. Dist. La.

Returned 19th October, 1849. Return registered Oct. 19, 1849.
ROBT. M. LUSHER, *D'y Clk.*

Filed 6th December, 1849.

220 Supreme Court of the United States.—December term, 1851.

THE UNITED STATES
vs.
LYND'S HEIRS. } 26.

THE UNITED STATES
vs.
PURTARD'S WIDOW. } 43.

THE UNITED STATES
vs.
DUPLANTIER & ALS. } 30.

THE UNITED STATES
vs.
ELKIN'S HEIRS. } 34.

THE UNITED STATES
vs.
RELF AND CHEW. 37.

THE UNITED STATES
vs.
221 POWERS' HEIRS. } 38.

THE UNITED STATES
vs.
CONRAD. } 63.

THE UNITED STATES
vs.
JOHNSTON ET AL. } 70.

THE UNITED STATES
vs.
FORTIER & AL. } 72.

THE UNITED STATES
vs.
LEONARD ET AL. } 75.

THE UNITED STATES
vs.
CITIZENS' BANK OF LOUISIANA. } 77.

Appeals from the district court of the United States for the eastern district of Louisiana.

222 Mr. Chief Justice Taney delivered the opinion of the court.

These cases all depend on the same principle. The several

grants were all made after the treaty of St. Ildefonso, by which the territory was ceded to the United States. This court has repeatedly decided that these grants are void, and the decisions of the district court to the contrary, in the within-mentioned cases, must all be reversed and a mandate issued directing the several petitions to be dismissed.

Supreme Court of the United States.—December term, 1851.

THE UNITED STATES, APP'L'S,
vs.
HENRY J. LYND, ROBERT S. LYND, WILLIAM C. LYND, and Rose Lynd, wife of R. C. Cammack, heirs
223 and legal representatives of John Lynd, deceased.

On appeal from the district court of the United States for the eastern district of Louisiana.

This cause came on to be heard on the transcript of the record from the district court of the United States for the eastern district of Louisiana, and was argued by counsel; on consideration whereof it is the opinion of this court that the grant is null and void. Whereupon it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed and annulled; and that this cause be, and the same is hereby, remanded to the said district court, with directions to dismiss the petition of the claimants.

224 19th Febr'y, '52.

I, D. W. Middleton, clerk of the Supreme Court of the United States, do hereby certify that the foregoing fifty-eight printed pages and the three manuscript pages contain a true copy of the record in the case of the United States, apppellant, vs. the Heirs of John Lynd, No. 26, of December term, 1851, filed in the Supreme Court of the United States on the 6th day of December, 1849, and also of the opinion and decree of the said Supreme Court in said case, and that the five plats certified by me thus:

United States vs. the Heirs of John Lynd.

A true copy:

D. W. MIDDLETON,
Clerk Supreme Court U. S.

are true copies.

225 In testimony whereof I hereunto set my hand and affix the seal of said Supreme Court, at the city of Washington, the twenty-third day of February, in the year of our Lord one thousand eight hundred and sixty-seven.

[SEAL.]

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

[5-c. U. S. internal revenue stamp affixed and cancelled.]

Certificate of death of Louis Bringier.—Filed June 25th, 1868.

United States of America, State of Louisiana, parish of Orleans, office of the recorder of births and deaths.

Be it remembered that on this day, to wit, the twenty-first of
226 December, in the year of our Lord one thousand eight hundred and sixty, and the eighty-fifth of the independence of the United States of America, before me, Pierre Lacoste, duly commissioned and

sworn recorder of births and deaths in and for the city and parish of Orleans, personally appeared Mr. Alexander Bergamini, jr., a native of the State of New York, aged about twenty-four years, now residing on St. Claude street, No. 344, who hereby declares that Lewis Bringier, a native of the State of Louisiana, aged about eighty-one years, died in this city, on Esplanade street, corner Prieur, on the twenty-ninth October, this present year, eighteen hundred and sixty, (29th October,
227 1860.) Deceased was lawfully married to Miss Hermione Gaignan, a native of New Orleans, her surviving consort & leaving three children.

Thus done at New Orleans, in the presence of the aforesaid Mr. Alex. Bergamini, jr., as also in that of Messrs. Eugene Jorda and François Garic, of this city, witnesses, by me requested so to be, who have hereunto set their hands, together with me, after due reading hereof, the day, month, and year first above written.

(Signed) A. BERGAMINI, JR.
E. JORDA.
FRANÇOIS GARIC.
PIERRE LACOSTE, *Recorder.*

I do certify the foregoing to be a true and faithful copy from the original recorded in book marked P, folio 463.

In testimony whereof I have set my hand and affixed the seal of my office, at the city of New Orleans, this twenty-fifth day of June, in
228 the year one thousand eight hundred and sixty-eight, and the ninety-second of the independence of the United States of America.

[SEAL.] SEVERIN LATORRE,
Recorder of Births and Deaths.

[5-c. U. S. int. rev. stamp affixed and cancelled.]

Certificate of death of Bernard Marigny.—Filed June 25th, 1868.

United States of America, State of Louisiana, parish of Orleans, office of the recorder of births and deaths.

Be it remembered that on this day, to wit, the sixteenth of February, in the year of our Lord one thousand eight hundred and sixty-
229 eight, and the ninety-second of the independence of the United States of America, before me, Severin Latorre, duly commissioned and sworn recorder of births and deaths in and for the city and parish of Orleans, personally appeared Jean Bonnot, a native of France, residing at No. 51 St. Ann street, (second district in this city,) who by these presents declares that Bernard Marigny, a native of New Orleans, aged about eighty-four years, departed this life on the third instant, in this present year, (3rd of February, 1868,) at one-quarter past ten o'clock a. m., at Mr. Jules d'Heincourt's residence, No. 297 Royal street, (second district in this city.)

Thus done at New Orleans, in the presence of the aforesaid Jean Bonnot, as also in that of Messrs. A. Sindos and J. N. Liantand, of
230 this city, witnesses, by me requested so to be, who have hereunto set their hands, together with me, after due reading hereof, the day, month, and year first above written.

(Signed) JEAN BONNOT.
A. SINDOS.
JOS. N. LIANTAND.
SEVERIN LATORRE, *Recorder.*

of my office, at the city of New Orleans, this twenty-fifth day of June, in the year one thousand eight hundred and sixty-eight, and the ninety-second of the independence of the United States of America.

[SEAL] SEVERIN LATORRE,
Recorder of Births and Deaths.

[5c. U. S. in. rev. stamp affixed and cancelled.]

Certificate of death of Etienne Mazuereau.—Filed June 25, 1868.

United States of America, State of Louisiana, parish of Orleans, office of the recorder of births and deaths.

Be it remembered that on this day, to wit, the twenty-ninth of May, in the year of our Lord one thousand eight hundred and forty-nine, and the seventy-third of the independence of the United States of America, before me, F. M. Crozat, duly commissioned and sworn recorder of births and deaths in and for the city and parish of Orleans, personally appeared Mr. Lucien Dubuc, residing in this city, who, by these presents, declares that Etienne Mazureau, a native of La Rochelle, (Charente Inferieure,) France, aged seventy-two years, an attorney and counsellor at law, died on the twenty-fifth instant, (May 25th, 1849,) in Toulouse street, between Dauphine and Burgundy streets, in the first municipality of this city. The deceased was married to Mrs. Aimée Grima, his surviving consort.

Thus done at New Orleans, in the presence of the aforesaid Mrs. Lucien Dubuc, as also in that of Messrs. Eugene Lacoste and Paul Emile Crozat, of this city, witnesses, by me requested so to be, who have hereunto set their hands, together with me, after due reading hereof, the day, month, and year first above written.

(Signed) L. DUBUC.
EUGENE LACOSTE.
P. E. CROZAT.
F. M. CROZAT, *Recorder.*

I do certify the foregoing to be a true and faithful copy from the original, recorded in book marked G, folio 1477.

In testimony whereof I have set my hand and affixed the seal of my office, at the city of New Orleans, this twenty-fifth day of June, in the year one thousand eight hundred and sixty-eight, and the ninety-second of the independence of the United States of America.

[SEAL.] SEVERIN LATORRE,
Recorder of Births and Deaths.

[5c. int. rev. stamp affixed and cancelled.]

Affidavit of P. H. Morgan.—Filed June 25, 1868.

P. H. Morgan, being duly sworn, deposes and says that he knew Philip Hicky; that the said Philip Hicky was born in the parish of East Baton Rouge before the cession of Louisiana to the United States, as he has often heard him say; and that he died on his plantation, called "Hope Estate," five miles below the city of Baton Rouge, in the State of Louisiana, in the year A. D. 1859 or 1860; that he left a last will and testament, and that affiant was one of his executors.

(Signed) P. H. MORGAN.

Sworn to and subscribed before me this 24th June, A. D. 1868.

[SEAL.] (Signed) F. B. VINOT,
Dy Clerk U. S. Circuit Court.

Testimony for plaintiffs.—Filed June 25th, 1868.

HEIRS OF JNO. LYND
vs.
THE UNITED STATES. } 5, new land docket.

Testimony for plaintiffs, taken before U. S. commissioner June 25th, 1868.

Present, L. Janin, for plaintiffs.
" S. H. Torrey, U. S. att'y, for def'ts.

Doctor Isidore Labatut, being sworn, says:

244 I am a resident of this city. I knew, very well, John Lynd; he has been dead for some 40 or 50 years. I have known 4 of his children—Henry; Robert; William; and Rosa Lynd, who married Mr. Cammack. Henry and William Lynd are dead; Robert, the elder son, and Rosa, wife of Cammack, are living. I have also known Louis Bouligny, who died at an advanced age some six years ago.

(Signed) I'RE LABATUT.

Sworn to and subscribed before me this 25th of June, 1868.
(Signed) K. LOEW, *U. S. Com'ner.*

Wm. J. McCulloh, sworn for complainants, says:

245 I was formerly surveyor general for the U. S. in Louisiana. I have known Jno. L. Daniel, now dead. I was surveyor general for the U. S. for Louisiana from July 1, 1853, up to the spring, 1861, when the ordinance of secession passed in La. Had been in the surveying business before that time, since January, 1848.

Pl'ffs' exhibit original doc't "A," filed in suit 120 on 16 June, 1846. This the witness recognises as the original title to Jno. Lynd.

There were eleven tracts in this title—32,025 arpents. An official copy was retained by the surveyor, Pintado, which I have now before me. This record contains copy of survey of the Lynd claims, which corresponds entirely with that set forth in Doc't "A," referred to. Plan "B," introduced by the pl'ff, shows the outlines of lots 10 & 11 of

246 Jno. Lynd's claims, corresponding with the surveys of the United States, and was prepared to show that the public lands therein have been disposed of by the U. S. government.

These two lots contain 11,707 arpents, equal to 10,045 acres.

(Signed) WM. J. McCULLOH.

Sworn to and subscribed before me this 25th June, 1868.
(Signed) K. LOEW, *U. S. Com'ner.*

Pl'ffs introduce the certificates of death of Etienne Mazureau, R. C. Cammack, Evareste Blanc, Henry T. Lynd, Louis Bringier, Bernard Marigny, and the affidavit of P. H. Morgan, esq., att'y at law.

247 *Testimony for plaintiffs.—Filed July 1st, 1868.*

HEIRS OF JNO. LYND
vs.
THE UNITED STATES. } No. 5.

Testimony for pl'ffs taken before K. Loew, U. S. commissioner, July 1, 1868.

Present, L. Janin, for pl'ffs.
" S. H. Torrey, U. S. att'y, for def'ts.

W. J. McColloh, recalled, says:

Plans C, D, E, & F represent the claims of Jno. Lynd; in it lots Nos. from 1 to 9, inclusive, and are prepared to show, and do show, the United States surveys covered by said lots.

These 9 lots contain together 20,255 arpents, equal to $17,216\frac{75}{100}$ acres.

I am perfectly familiar with the public surveys in the State of
248 Louisiana, and with the grants that were issued by the different governments before Louisiana became a part of the United States.

(Signed) WM. J. McCULLOH.

Sworn to and subscribed before me this 1st July, 1868.
(Signed) K. LOEW, *U. S. Com'ner.*

(Plans B, C, D, E, & F are found at pages 364 to 368 of this transcript.)

Jno. E. Holland, being sworn, says he has known Edward Lauve, who in his lifetime was interpretor of the United States court; said Lauve is dead; he died a good many years ago.

(Signed) JNO. E. HOLLAND.

Sworn to and subscribed before me this 1st July, 1868.
(Signed) K. LOEW, *U. S. Co.n'ner.*

249 *Testimony for plaintiffs.—Filed July 3rd, 1868.*

HEIRS OF JOHN LYND, } 5.
vs.
THE UNITED STATES. }

JULY 3RD, 1868.

Plaintiffs' exhibit Document "G" the witness McCulloh says, that it is a true copy taken by him from the printed report of the Commissioner General Land Office, dated October 15th, 1867.

DOCUMENT "G."

Extract from report of Com'n'r of the General Land Office, Oct. 15th, 1867.—Claims in West Florida.—Filed July 3rd, 1868.

250 Extract from the report of Commissioner Gen'l Land Office to the Secretary of the Interior, dated Oct. 15th, 1867—page 87.

" *Florida, Louisiana, and Missouri.*—The act of Congress approved 2d May, 1867, continues in force for three years the provisions of the statute of 22d June 1860, for the final adjustment of private land-claims in the States of Florida, Louisiana and Missouri, and for other purposes.

"That act constituted the registers and receivers of the several land offices in Florida & Louisiana & the recorder of land titles at St. Louis for the State of Missouri commissioners to hear and decide, under instructions from the General Land Office, all matters respecting claims to land

within their respective districts. The law confers power upon
251 them to receive only such claims as are founded in written grants, and hence interdicts action upon any interest founded merely on ancient settlement, when the same is unaccompanied by paper title from the authorities of the former government.

"These statutes authorize the reception and action upon such claims for tracts within the several districts as have emanated from any foreign government, bearing date prior to the cession to the United States of the territory out of which the States were formed, or during the period when any such government claimed sovereignity, or had the actual possession of the district or territory in which the lands so claimed are situated.

"This warrants them in receiving and acting, not only upon claims, which originated under the former governments while the author-
252 ities exercised the granting power de jure, before the cession of the country, but also allowed claims to be received which were made by the Spanish authorities while they were in actual possession of the territory as the government de facto. Thus, for example, Spain parted with authority over the province of Louisiana by the secret treaty of 1800 at San Ildefonso, when that power ceded Louisiana to France. During the period that elapsed from that time to the cession to the United States in 1803, by Napoleon, the Spanish authorities exercised the granting power, and so, several years subsequent to 1803, Spain, while in occupancy of the ancient province of Louisiana between the Iberville, or Manchae, and the Perdido, continued to make land
253 concessions, and during this period the grants were of course those of the government de facto. Titles of this class stood excluded by the ruling of the Supreme Court of the United States, case of Foster & Elam vs. Neilson, (2d Peter's Supreme Court of the United States,) in which an elaborate decision was rendered by the Chief Justice against their validity under the then existing laws and treaties. Now, by the force and effects of said acts of 1860 & 1867, a status is given to claims founded on titles from de facto governments, after the authority de jure had passed from them, a principle being thus legislatively recognized which had not previously been done nor admitted in the judicial rulings of the Supreme Court of the United States."

NEW ORLEANS, *July 3rd*, 1868.

254 I, Wm. J. McColloh, certify the within to be a correct abstract, made by me, from the report of the Commissioner of the General Land Office to the Secretary of the Interior, dated October 15, 1867.

(Signed) WM. J. McCULLOH.

Note of evidence.—Filed May 28th, 1869.

United States district court, district of Louisiana.

HEIRS OF JNO. LYND } *vs.* THE UNITED STATES. } No. 5.

Evidence introduced by plaintiffs.

1°. The record of the suit No. 120 of the docket of this court in-
255 stituted on the 16th of June, 1846, under the act of Congress of June 17th, 1844, for confirmation of the same title.

2°. Document "A" annexed to the petition in the suit No. 120, being

the original title of Jno. Lynd & the plans of survey, with the endorsement of the clerk of the commissioners to whom the claim was first submitted for adjudication.

3°. Extract from the commissioners' report.

4°. Translation of Document "A" filed in the suit No. 120 on Dec. 9th, 1849, and made by Edward Lauve, then the sworn interpreter or translator of the court, and now dead. (Proof of his death made.)

256 5°. Depositions of John E. Holland, showing that Edward Lauve is dead and has been dead for many years. And certificate of the death of Evariste Blanc, Bernard Marigny, Etienne Mazureau, R. C. Cammack, Louis Bringier, and depositions showing death of Philip Hickey and John S. Daniel.

6th. The depositions of Evariste Blanc, Bernard Marigny, and of Mazureau in suit No. 120, on the 13th, 1847, and filed on the 17 of April, 1847.

7th. Affidavit of R. C. Cammack, made in suit 120, on June 23d, 1847, and filed May 31st, 1849.

257 8th. Affidavit of R. C. Cammack, made in suit 120, on April 21st, 1847.

9th. Order of court of May 29th, 1848, submitting special questions to a jury.

10th. Depositions of R. C. Cammack in suit No. 120, given on May 31st, 1849.

11th. Deposition of Philip Hickey in suit No. 120, taken Feb'y 28th, 1848.

12th. Deposition of Louis Bringier in suit No. 120, taken April 8th, 1848, and of Jno. L. Daniel in suit of No. 120.

13th. Certificate of Carlos Trudeau on June 18th, 1804, and referred to in the deposition of Louis Bringier.

258 14th. Special questions or issues submitted to a jury in suit No. 120, and the verdict of the jury on the same.

15th. Decision of the Supreme Court of the United States in the case of the United States, appellants, vs. the Heirs of John Lynd, as certified by the clerk of the Supreme Court, on the 23 Feb'ry, 1847.

16th. Deposition of W. J. McCulloh as to death of John L. Daniel.

17th. Certificate of death of Henry Lynd.

18th. Deposition of Isidore Labatut as to death of John Lynd, what heirs and legal representatives were left by him at his death, as

259 to the death of some of them, & as to the death of Louis Bouligny.

19th. Plats marked "B," "C," "D," "E," & "F."

20th. Extract from report of the Commissioner of the General Land Office, marked "G."

21st. Testimony of W. J. McCulloh as to the plan "B."

22d. Testimony of W. J. McCulloh as to the plans "C," "D," "E," and "F."

23rd. Testimony of W. J. McCulloh as to doc. marked "G."

24th. Affidavit of Mrs. Rose Cammack, one of the plaintiffs, as to the land covered by the claim of the plaintiffs, according to the legal division and subdivisions, &c.

260 *Note of evidence.—Filed by plaintiff June 23rd*, 1869.

THE HEIRS OF JOHN LYND }
vs.
THE UNITED STATES. }

The plaintiffs offer in evidence the record of the suit heretofore insti-

tuted by them under the act of Congress of June 17th, 1844, as No. 120 of the old land docket, and the evidence therein contained; and, further, all the evidence heretofore filed in the present case.

It is admitted that since 1861 no surveyor general for the United States was in office in the State of Louisiana, and that the person lately appointed surveyor general immediately after his appointment left for Washington without having opened an office.

261 The plaintiffs introduce the report of the Senate Committee on Private Land Claims of May 26th, 1858, on certain Florida land claims.

The plaintiffs shall have leave to file a certificate, as required by the act of June 22, 1860, by the surveyor general of the United States for the State of Louisiana, as soon as that office is opened for public business.

The counsel for plaintiffs communicates a brief to the district attorney, who shall have one week to answer it; after which time the case shall be considered as being before the court for decision.

262 *Mr. Benjamin's report.—Filed by plaintiffs June 23d, 1869.*

35 Congress, 1st session.—Senate.—Rep. com., No. 279.—In the Senate of the United States, May 26, 1858, ordered to be printed.

Mr. Benjamin made the following report, to accompany bill S. No. 410:

The Committee on Private Land Claims, to whom was referred the memorial of the city of New Orleans, asking confirmation of title to one-half of certain lands devised by John McDonough to that city, as tenant, in common with the city of Baltimore, report:

The lands represented in the memorial are situate in that part of the State of Louisiana which lies east of the Mississippi and Iberville Rivers, and the Lakes Maurepas and Pontchartrain, and
263 are known as the Florida parishes of Louisiana.

These parishes were not within the present State of Louisiana when it was admitted into the Union, but were cut off from "the adjacent territory occupied by the United States," otherwise known as West Florida, and added to Louisiana by act of Congress passed 14th April, 1812.

The original title to 223,333 acres of the lands described in the memorial was derived from the King of Spain by purchase from and payment made to Don Juan Ventura Morales, governor general of Louisiana and West Florida, in the months of October and November, 1803.

The title to 21,000 acres was derived from a settlement right in favor of Philip Robinson, acknowledged by the Spanish authorities to
264 be a valid claim in 1804.

The title to 1,420 acres was derived from the grant made by the Spanish authorities on the 5th March, 1806.

The titles thus set forth by the memorialists are unquestionable valid, if, at the date when they were acquired, it was within the power of the Spanish government to make sales or grants of land within the territory in which lands claimed are situated; and this question, it is believed, is now for the first time presented for a decision by Congress since the treaty with Spain of the 22d February, 1819, by which the Floridas were acquired.

The examination of this question requires a reference to the history of the negotiations which accompanied not only that treaty, but the

treaty of the 30th April, 1803, by which Louisiana was acquired from France. A thorough comprehension of the whole subject
265 requires also a succinct statement of the condition of our relations with France and Spain, so far as concerns our western and southwestern boundaries at the commencement of the present century.

At that period the American settlements had crossed the Alleghanies, and were rapidly spreading not only upon the upper waters of the Mississippi, but upon those of the Mobile, the Chattahoochie, and other streams of West Florida. Spain possessed the outlets of these rivers, through which alone could the upper country communicate with the Gulf, as well as the only eligible points at which the productions of this vast interior could be safely deposited for shipment. And Mr. Madison, then Secretary of State, wrote to Mr. Pinckney, our minister at
266 Madrid, on the 30th of March, 1802, that the inhabitants complained that the treaty with Spain "had omitted to provide for the use of the Mobile, Chattahoochie, and other rivers running from our territory through that of Spain." (2 American State Papers, foreign relations, 515.)

With a frontier population coming, for the first time, in contact with a race whose language and institutions, civil, social, and religious, differed from their own, it was not surprising that the tendency to border disturbances was greatly increased, and that the enforcement of federal law over a distant and unsettled region became a delicate and difficult duty.

At this juncture the wanton suppression of the right of deposit upon the island of New Orleans by the governor of Louisiana, without the assignment of any other place for that purpose, as guarantied to the American people by convention, occasioned the highest national excitement.

267 By that act "agricultural productions," says the historian, (Marbois, p. 215,) "suddenly lost half their value, as well at New Orleans as at Natchez." "Already the cry of alarm was heard, not only in the States of Ohio, Tennessee, and Kentucky, but even in all the old States."

In addition to this source of irritation, the government had been for some years on the eve of a rupture with France and Spain, by reason of spoliations on our commerce. These, with other political considerations of great weight, rendered it incumbent on the administration to make an energetic attempt to settle all pending causes of difficulty by the acquisition of rights of navigation in the waters of all the southwestern streams, and even, if possible, the purchase of the Floridas and of New Orleans. To these purposes were the original negotiations limited,
268 and so important was it deemed, that the most eminent of our statesmen were selected for its accomplishment: President Jefferson selecting Mr. King for the embassy to London, Mr. Livingston to France, and Mr. Pinckney to Spain; whilst at home the instructions were prepared under his auspices by Mr. Madison. To this accomplished corps Mr. Jefferson added the experience of Mr. Monroe, soliciting him, by an autograph letter, to visit Paris as minister plenipotentiary to aid him in relieving the government from the embarrassments which complicated its foreign relations and threatened a disturbance of its peace.

That the original negotiations were limited to the acquisition of New Orleans and the Floridas, particularly West Florida, will be apparent by reference to the instructions of Mr. Madison of 9th June and 28th September, 1801, (2 For. Rel., 510;) and it further appears from

269 the same and subsequent instructions that the government of the United States was then ignorant of the secret cession by Spain to France, although rumors of such cession had already began to circulate in the public papers.

The negotiations were unsuccessful. Mr. Livingston despaired. On the 1st September, 1802, he wrote to the Secretary of State: "There never was a government in which less can be done by negotiation than here. There is no people, no legislature, no counsellors. One man is everything. He seldom asks advice; never hears it unasked. His ministers are mere clerks, and his legislature and counsellors parade officers."

It was after the date of this letter that Mr. Monroe was sent to Paris, with instructions "to procure the cession of New Orleans and the Floridas to the United States, and consequently the establish-
270 ment of the Mississippi as the boundary between the United States and Louisiana." (Letter of 18th January, 1803; 2 For. Rel., 529.)

On the 11th April, 1803, Mr. Livingston writes: "Mr. Talleyrand asked me this day, when pressing the subject, whether we wished to have the whole of Louisiana. I told him no; that our wishes extended only to New Orleans and the Floridas." (2. For. Rel., 552.) He also writes, "I have used every endeavor with the Spanish ambassador and Lord Whiteworth to prevent the transfer (to France) of the Floridas."

Napoleon, however, pressed upon the American minister the acquisition of the entire province of Louisiana with such rapidity that, notwithstanding the distrust which seems at first to have been entertained by the latter, a treaty was matured and signed within a few days, and the most splendid acquisition ever made by a nation was thus suddenly and unexpectedly added to our domain.

271 The motives and reasons for this abrupt change of policy on the part of the French government are thus stated by the historian Marbois, who was a party to the negotiations, and whose truthfulness and integrity are well established.

On Easter Sunday, the 10th April, 1803, after having attended to the solemnities and ceremonies of the day, Napoleon called two ministers who had been acquainted with the countries under consideration. Addressing them with that vehemence and passion which he particularly manifested in political affairs, he said:

"I know the full value of Louisiana, and I have been desirous of repairing the fault of the French negotiator who abandoned it in 1763. A few lines of a treaty have restored it to me, and I have scarce recovered it when I must expect to lose it. But if it escapes from me
272 it shall one day cost dearer to those who oblige me to strip myself of it than to those to whom I wish to deliver it. The English have successively taken from France Canada, Cape Breton, Newfoundland, Nova Scotia, and the richest portions of Asia. They are engaged in exciting troubles in St. Domingo. They shall not have the Mississippi, which they covet. Louisiana is nothing in comparison with their conquests in all parts of the globe, and yet the jealousy which they feel at the restoration of this colony to the sovereignty of France acquaints me with their wish to take possession of it, and it is thus that they will begin the war. They have twenty ships of war in the Gulf of Mexico. They sail over those seas as sovereigns, whilst our affairs in St. Domingo have been growing worse and worse every day since the death of Leclerc. The conquest of Louisiana would be easy, if they only took the trouble to make a descent there. I have not a moment

273 to lose in putting it out of their reach. I know not whether they are not already there. It is their usual course, and if I had been in their place I would not have waited. I wish, if there is still time, to take from them any idea that they may have of ever possessing that territory. I think of ceding it to the United States. I can scarcely say that I cede it to them, for it is not yet in our possession. If, however, I leave the least time to our enemies, I shall only transmit an empty title to those republicans whose friendship I seek. They only ask of me one town in Louisiana, but I already consider the colony as entirely lost, and it appears to me that in the hands of this growing power it will be more useful to the policy, and even to the commerce, of France, than if I should attempt to keep it." (Marbois, 263–'4.)

274 The ministers called into council then discussed the policy of selling Louisiana. "The discussions were," says the historian, "prolonged into the night. The ministers remained at St. Cloud, and at daybreak he summoned the one who had advised the cession of Louisiana, and made him read the dispatches which had just arrived from London. His ambassador informed him that naval and military preparations of every kind were making with extraordinary rapidity.

Upon hearing this intelligence, Napoleon, after some remarks upon the commercial importance of certain military positions in the Levant, which England was supposed to desire, proceeded:

"Irresolution and deliberation are no longer in season. I renounce Louisiana. It is not only New Orleans that I will cede—it is the whole colony, without any reservation. I know the price of what I aban-

275 don, and I have sufficiently proved the importance that I attach to the province, since my first diplomatic act with Spain for the recovery of it. I renounce it with the greatest regret. To attempt obstinately to retain it would be folly. I direct you to negotiate this affair with the envoys of the United States. Do not even await the arrival of Mr. Monroe; have an interview this very day with Mr. Livingston; but I require a great deal of money for this war, and I would not like to commence it with new contributions. For a hundred years France and Spain have been incurring expenses for improvements in Louisiana, for which its commerce has never indemnified them. Large sums, which will never be returned to the treasury, have been lent to companies and agriculturists. The price of all these things is

276 justly due to us. If I should regulate my terms according to the value of these vast regions to the United States, the indemnity would have no limits. I will be moderate, in consideration of the necessity in which I am of making a sale, but keep this to yourself. I want fifty millions, and for less than that sum I will not treat. I would rather make a desperate attempt to keep these fine countries. To morrow you shall have full powers." (Marbois, 294–'5.)

A letter of the 29th July, 1803, from the Secretary of State, acknowledging to Mr. Livingston the receipt of his communication, informing the government of the United States of this unexpected acquisition, says: "The object of the most sanguine was limited to the establishment of the Mississippi as our boundary. It was not thought that more could be sought by the United States, either with a chance of success, or, perhaps, without being suspected of a greedy am-

277 bition, than the island of New Orleans and the two Floridas, it being little doubted that the latter was or would be comprehended in the cession from Spain to France. To the acquisition of New Orleans and the Floridas the provision was, therefore, accommodated. Nor was it to be supposed that, in case the French government should be willing

to part with more than the territory on one side of the Mississippi, our arrangement with Spain for restoring to her the territory on the other side would not be preferred to a sale of it to the United States." After stating that no expectations of success in the objects of the French mission had been entertained, except from some such military necessity as had occurred, the Secretary adds: "It is just ground for mutual and general felicitation that it (the crisis relied on) has issued, under your zealous exertions, in the extensive acquisition beyond the Mississippi.

278 "With respect to the terms on which the acquisition was made, there can be no doubt that the bargain will be regarded as, on the whole, highly advantageous. The pecuniary stipulations would have been more satisfactory, if they had departed less from the plan prescribed, and particularly if the two millions of dollars in cash, intended to reduce the price or hasten the delivery of possession, had been so applied, and the assumed payments to American claimants placed on the footing mentioned in the instructions; the unexpected weight of the draught now to be made on the treasury will be sensibly felt by it, and may possibly be important in regard to other important objects.

"I can only add the wish of the President to learn from you the understanding which prevailed in the negotiations with respect to the boundaries of Louisiana; and more particularly the pretensions and proofs for carrying it to the river Perdido, or for including any
280 lesser portion of West Florida."

To this question of Mr. Madison, no reply seems to have been given; but the United States, from the date of the treaty, always persistently asserted that the cession of Louisiana carried with it the territory lying between the Mississippi and Perdido Rivers, whilst Spain as persistently repelled this pretention, and the matter remained a subject of earnest and angry controversy between the two powers till their dispute was finally settled by the treaty of 1819, whereby Spain ceded the Floridas to the United States.

The titles to the lands now claimed by the memorialists lie within this disputed territory, and although their validity might, in the opinion of the committee, be conclusively established without reference to the merits of the controversy just mentioned, the committee feel
281 it to be their duty to investigate and report on this element of the title of the memorialists, as it is one which they earnestly urge in support of their pretensions.

The description of Louisiana, as ceded by France, is given in the treaty of 1803, in the first article, in these words:

"Whereas, by the article the third of the treaty concluded at St. Ildelfonso the 1st of October, 1800, between the First Consul of the French republic and his Catholic Majesty, it was agreed as follows:

"His Catholic Majesty promises and engages, on his part, to cede to the French republic, six months after the full and entire execution of the conditions and stipulations herein relative to his royal highness the Duke of Parma, the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states; and
282 whereas, in pursuance of the treaty, and particularly of the third article, the French republic has an incontestable title to the domain and to the possession of the said territory, the First Consul of the French republic, desiring to give to the United States a strong proof of his friendship, doth hereby cede to the United States, in the name of

the French republic, forever and in full sovereignty, the said territory, with all its rights and appurtenances, as fully and in the same manner as they have been acquired by the French republic, in virtue of the above-mentioned treaty concluded with his Catholic Majesty."

It is obvious, from the very terms of this treaty, that the description of the boundaries was studiously omitted, and that France simply stipulated to convey whatever she had acquired from Spain. It be-
283 comes, then, quite interesting to ascertain, if possible, the reasons why so important an element of the treaty as a precise designation of the boundaries of the ceded territory was carefully excluded. Let us, for this purpose, compare the statements made by the diplomatists who negotiated the convention.

Mr. Livingston in his despatches frequently recurs to this subject.

In his despatch of the 5th February, 1803, he says: "The Floridas not yet ceded, (to France,) owing, I believe, to some difficulty about Parma. Spain is, however, prepared to make the cession, and I presume it will be done." (2 For. Rel., 532.)

On the 18th February, 1803: "I have proposed to them the relinquishment of New Orleans and West Florida as far as the river Perdido. The essential fact is that the Floridas are not yet ceded; i. e. by Spain to France." (Page 533.)

On the 3d March, 1803: "The Floridas are still in the hands of Spain." (Page 538.)

284 On the 11th March, 1803: "If, as I begin to believe, they (the French) do not get the Floridas, they will put the less value on New Orleans."

On the 11th April, 1803: "I endeavored to convince the government that the United States would avail themselves of the breach of the treaty to possess themselves of New Orleans and the Floridas; that Britain would never suffer Spain to grant the Floridas to France, even were she so disposed, but would immediately seize upon them as soon as the transfer was made; that without the Floridas Louisiana would be indefensible. I have used every exertion with the Spanish ambassador and Lord Whitworth to prevent the transfer of the Floridas." (Page 553.)

On the 13th April, 1803, in speaking of the negotiations with Mr. Marbois, whose character for integrity he says is established, after mentioning the sum spoken of for the purchase of Louisiana, he
285 adds: "I asked him, in case of a purchase, whether they would stipulate that France would never possess the Floridas, and that she would aid us to procure them, and relinquish all right she might have to them? He told me that she would go thus far." (Page 553.)

On the 12th May, 1803: "I am satisfied that from this period they had determined to let us have New Orleans and the territory above the Arkansas in exchange for certain commercial advantages; and that if they could have concluded with Spain, we should also have had West Florida." (Page 558.)

On the 12th May, 1803, he writes in relation to the colonization of Louisiana, that on his arrival in France it was a favorite project with the First Consul: "Nor would any one of them hear of disposing of it by sale; yet, so ignorant were they of the nature of their acquisition, that they never once suspected the Floridas were not included in their treaty till they were convinced of the contrary by the inquiries
286 they set on foot in consequence of my information." (Page 557.)

Comments on these passages would be superfluous. The evidence is irrefragable that the American minister had not the least idea

that, in purchasing Louisiana, he was acquiring West Florida, within whose limits are situated the lands claimed by the memorialists.

The French diplomatist states in his history that the American negotiators at first insisted on a definition of boundaries, which they connected with the idea of a guarantee on the part of France, but there was some difficulty about the precise limit between Louisiana and Florida then pending with Spain, and Mr. Marbois said:

"The circumstances are too pressing to permit us to concert matters on this subject with the court of Madrid. It would be too long before the discussion could be terminated, and, perhaps, that government would wish to consult the viceroy of Mexico. Is it not better for the
287 United States to abide by a general stipulation, and, since these territories are still at this day, for the most part, in the possession of the Indians, await further arrangements, or leave the matter for the treaty stipulations that the United States may make with them and Spain? In granting Canada to the English at the peace of 1763, we only extended the cession to the country that we possessed. It is, however, as a consequence of that treaty, that England has occupied territory to the west as far as the Great Northern Ocean. Whether," continues the historian, "the American plenipotentiaries had themselves desired what was proposed, or that their words afforded them a ray of light, they declared that they kept to the terms of the third article of the treaty of St. Ildefonso, which was inserted entire in the first article of the treaty of cession."

Mr. Marbois, who offered the draught, said several times: "The first article may, in time, give rise to difficulties; they are at this day insurmountable; but if they do not stop you, I, at least, desire that
288 your government should know that you have been warned of them."

The French negotiator on rendering an account to the First Consul, pointed out to him the obscurity of this article, and the inconvenience of so uncertain a stipulation. He replied that "if an obscurity did not already exist, it would, perhaps, be a good policy to put one there." (Marbois, pp. 283-'4-'5-'6.)

Having thus referred to the statements of the two parties who negotiated the treaty, let us next turn to the evidence of the construction, which was originally put by our government on its own rights under it. On the 29th July, 1803, Mr. Madison's despatch to Mr. Pinckney, at Madrid, opens a fresh negotiation with Spain for the acquisition of the two Floridas, with these words: "You will have learned, doubtless, from Paris, that a treaty has been signed there by which New Orleans and the rest of Louisiana is conveyed to the United States. The
289 Floridas are not included in the treaty, being, it appears, still held by Spain." (2 For. Rel., p. 614.)

On the same day that is affixed as the date of the instructions to Mr. Pinckney, at Madrid, viz., July 29, 1803, more elaborate instructions were sent to Mr. Monroe, who had been directed to proceed to Spain and aid Mr. Pinckney in accomplishing the objects so earnestly sought by our government.

The following passages are extracted from these instructions, (Am. State Papers, For. Rel., vol. 2, p. 626:)

"It is thought proper to observe to you that although Louisiana may, in some respects, be more important than the Floridas, and has more than exhausted the funds allotted for the purchase of the latter, the acquisition of the Floridas is still to be pursued, especially as the crisis must be favorable to it." Again: "There is little ground for supposing that

the maritime powers of Europe will complain of or be dissatisfied with a cession of the two Floridas to the United States more than with the late cession of Louisiana by Spain to France."

290 The terms of these instructions are too plain to permit a doubt of the construction placed by our government on its acquisition. We had acquired Louisiana, but neither of the two Floridas.

It appears that the first idea of a claim by our government to West Florida, as comprised in its purchase of Louisiana, originated with Mr. Livingston, whose letter of the 20th May, 1803, could not have reached Mr. Madison at the date when he issued his instructions of 29th July of the same year. This letter of Mr. Livingston, dated three weeks after the signature of the treaty, is sufficiently important to be transcribed in full:

"PARIS, *May 20th*, 1803.

"DEAR SIR: The subject of this letter is too important to admit of delay, in case the treaties should have been any time in your hands; but as it has not yet been fully considered by Mr. Monroe, he thinks he cannot make it that of a joint letter until we have more fully discussed

291 it, which we propose to do to-morrow or the next day. But as that will be too late for this conveyance, I throw out these hasty thoughts for your consideration. In the mean time you will consider this rather as a private than a public letter, since it may or may not be made use of to promote such measures as, upon mature deliberation, the President shall think proper to adopt. I do not doubt, however, that Mr. Monroe will concur with me in opinion after we have discussed the subject, and that we shall, by the next opportunity, write to you officially thereon.

"I informed you long since that on inquiring whether the Floridas were within the cession of Spain, I was told by Mr. Marbois that he was sure that Mobile was, but could not answer further. I believed this information incorrect, because I understood that Louisiana, as it then was, was made the object of the cession, and that since the possession of the Floridas by Britain they had changed their names. But the mo-

292 ment I saw the words of the treaty of Madrid, I had no doubt but it included all the country that France possessed by the name of Louisiana previous to their cession to Spain, except what had been conveyed by subsequent treaties. I accordingly insisted with Mr. Marbois at the time we negotiated, that this would be considered within our purchase. He neither assented nor denied, but said that all they received from Spain was intended to be conveyed to us. That my construction was right, was fairly to be inferred from the words of the treaties, and from a comment upon them contained in the Spanish minister's letter to Mr. Pinckney, in which he expressly says that France had recovered Louisiana, as it formerly belonged to her, saving the rights of other powers. This leaves no doubt upon the subject of the intention of the contracting parties. Now, it is well known that Louisiana, as possessed by

293 France, was bounded by the river Perdido, and that Mobile was the metropolis. For the facts relative to this, I refer you to Raynal and to his maps. I have also seen maps here which put the matter out of dispute.

"I called this morning upon Mr. Marbois for a further explanation on this subject, and to remind him of his having told me that Mobile made a part of the cession. He told me that he had no precise idea on the subject, but he knew it to be an historical fact, and that on that only he had formed his opinion. I asked him what orders had been given to

the prefect who was to take possession, or what orders had been given by Spain as to the boundaries in ceding it? He assured me that he did not know, but that he would make the inquiry and let me know. At four o'clock I called for Mr. Monroe to take him to the minister of foreign affaires, but he was prevented from accompanying me. I asked the minister what were the east bounds of the territory ceded to
294 us. He said he did not know; we must take it as they had received it. I asked him how Spain meant to give them possession? He said: 'According to the words of the treaty.' 'But what do you mean to take?' 'I do not know.' 'Then you mean that we shall construe it in our own way?' 'I can give you no direction; you have made a noble bargain for yourselves, and I suppose you will make the most of it.'

"Now, sir, the sum of this business is to recommend to you in the strongest terms, after having obtained the possession that the French commissary will give you, to insist upon this as a part of your right, and to take possession at all events to the river Perdido. I pledge myself that your right is good, and after the explanations that have been given here, you need apprehend nothing from a decisive measure. Your ministers here and at Madrid can support your claim, and the time is peculiarly favorable to enable you to do it without the
295 smallest risk at home. It may also be important to anticipate any designs that Britain may have upon that country. Should she possess herself of it, and the war terminate favorably for her, she will not readily relinquish it. With this in your hand, East Florida will be of little moment, and may be yours whenever you please. At all events, proclaim your right and take possession.

"I am, sir, &c.,

"ROB. R. LIVINGSTON.

"Hon. JAMES MADISON."

A similar communication was addressed to Mr. Pinckney at Madrid, and reached him before the instructions issued by Mr. Madison, of 29th July, 1803; for, on the 2d August, 1803, he informs Mr. Madison that he "had received official information from Mr. Monroe and Mr. Livingston that Louisiana was ceded, and that the considered the cession as including West Florida." (2 For. Rel., 597.)

The effect of these communications of our ministers in France
296 was speedily apparent, both in the conduct of our negotiations with Spain and in the action of our government at home. Instead of pursuing the instructions of the Secretary of State, and seeking to purchase the two Floridas, Mr. Pinckney asserted title to West Florida; and Congress, whilst it passed an act for the establishment of collection districts at New Orleans and Natchez, proceeded cautiously to test the feeling of Spain on the subject by adding a section to the law, authorizing the President, "whenever he shall deem it expedient, to erect the shores, waters, and inlets of the bay and river Mobile, and of the other rivers, creeks, inlets, and bays emptying into the Gulf of Mexico, east of the said river Mobile, and west thereof to the Pascagoula, inclusive, into a separate district." (Act 24th February, 1804.)

The pretensions of our minister were firmly and persistently re-
297 sisted by Spain, whilst great offense was taken at the passage of the act just quoted, and Mr. Jefferson, in his message to Congress of 8th November, 1804, stated the result as follows:

"Soon after the passage of the act of the last session authorizing the establishment of a district and port of entry on the waters of the Mobile, we learned that its object was misunderstood on the part of Spain.

"Candid explanations were immediately given, and assurances that, reserving our claims in that quarter as a subject of discussion and arrangement with Spain, no act was meditated, in the mean time, inconsistent with the peace and friendship existing between the two nations."

This complaint had been made to our minister in Spain as soon as the news of the passage of the act reached that country; and Mr. Pinckney, on the 1st June, 1804, replying to the complaint, says that he has not yet received any information of the passage of the act, nor instruc-
298 tions on the subject, and recalls to the Spanish minister that he had made "a verbal communication of the contents of an official letter he had received from Mr. Livingston and Mr. Monroe; that they considered a great part of West Florida, as so called by the English, included in the cession." He adds: "Such letter could not have been written to me by them officially without their having been so informed by the French plenipotentiary and government."

Relying on this inference, which we have already seen was erroneous, Mr. Pinckney informed the Spanish minister that he should appeal to the French government to support his view, and the Spanish government made a similar appeal to France.

The result was disastrous to the expectations so confidently entertained by Mr. Pinckney, and which were shared by Mr. Monroe, who made the appeal to France, in a letter dated at Paris, on the 8th of November, 1804. (2 For. Rel., 634.)

299 Mr. Talleyrand made reply on the 21st December, 1804, (p. 635,) as follows:

"France, in giving up Louisiana to the United States, transferred to them all the rights over that colony which she had acquired from Spain; she could not, nor did she wish, to cede any other; and that no room might be left for doubt in this respect, she repeated, in her treaty of 30th April, 1803, the literal expressions of the treaty of St. Ildefonso, by which she had acquired that colony two years before.

"Now, it was stipulated in her treaty of the year 1801, that the acquisition of Louisiana by France was a retrocession; that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Ponchartrain; the same day she ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this Spain had received no part, and could, therefore, give none back to France.

300 "All the territory lying to the eastward of the Mississippi and the river Iberville, and south of the 32d degree of north latitude, bears the name of Florida; it has been constantly designated in that way during the time that Spain held it; it bears the same name in the treaties between Spain and the United States, and in different notes of Mr. Livingston, of a later date than the treaty of retrocession, in which the name of Louisiana is given to the territory on the west side of the Mississippi; of Florida, to that on the east of it.

"According to this designation thus consecrated by time, and even prior to the period when Spain began to possess the whole territory between the 31st degree, the Mississippi, and the sea, this country ought, in good spirit and justice, to be distinguished from Louisiana.

"Your excellency knows that before the preliminaries of 1762, confirmed by the treaty of 1763, the French possessions, situated near
301 the Mississippi, extended as far from the east of this river as in the quarters of the Mobile, and you must think it as unnatural, after all the changes of sovereignty which that part of America has un-

dergone, to give the name of Louisiana to the district of Mobile, as to the territory near to the north on the same bank of the river, which formerly belonged to France.

"These observations, sir, will be sufficient to dispel every kind of doubt with regard to the extent of the retrocession made by Spain to France, in the month of Vendemaire, year 9. It was under this impression that the French and Spanish plenipotentiaries negotiated, and it was under this impression that I have since had occasion to give the necessary explanations when a project was formed to take possession of it. I have laid before his Imperial Majesty (Napoleon) the negotiations of Madrid, which preceded the treaty of 1801, and his Majesty is
302 convinced, that during the whole course of these negotiations, the Spanish government has constantly refused to cede any part of the Floridas, even from the Mississippi to the Mobile.

"His Imperial Majesty has, moreover, authorized me to declare to you, that at the beginning of the year 11, General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas. This project, which has not been followed by any treaty, is an evident proof that France had not acquired, by the treaty retroceding Louisiana, the country east of the Mississippi. (Am. State Papers, vol. 3, p. 635.)

A similar reply was given to the Spanish government on the 5th Germinal, year 13, (26 March, 1805.) (2 For. Rel., 659.)

The pretensions of Spain, thus maintained, were never abandoned, nor has there ever been any determination as to their validity. The committee is therefore forced, in the performance of its duty, to express an opinion upon the relative claims of the two countries to this
303 disputed territory; an opinion which necessarily involves an inquiry into the extent of the rights acquired by France under the treaty of St. Ildefonso; for those, and those alone, were acquired by the United States according to the very words of the treaty of 1803.

Prior to the treaty of 1763 the pretensions of the different European powers which had colonized America were the sources of unceasing controversies, and not unfrequently of hostile collision. The pretensions of Spain dated back to the sixteenth century, and claimed to encircle the Gulf of Mexico, from the capes of Yucatan, to those of Florida. France, according to her grant to Crozat, claimed all the country between the confines of Mexico and the Carolinas, and the vast regions between the Pacific on the west and the colony of Virginia on the east; whilst English pretensions came into conflict with the claims of both those powers.

The treaty of 1763 made a final settlement of the respective pretensions of all the parties. It was agreed that the separation between
304 France and England should be by "a line through the middle of the lower Mississippi, from its source to the Iberville, and through the Iberville and the Lakes Maurepas and Pontchartrain to the sea." Consequently, England's title was recognized to all the territory east of the Mississippi, except the island of New Orleans, and she thereby became the undisputed owner of the territory in which the lands now claimed by the memorialists are situated. From that date this territory was called, by historians and geographers, West Florida, and continued to be known as such to all the governments of Europe. Spain joined in the relinquishment of title, and guarantied to England "Florida, with Fort St. Augustine, and the bay of Pensacola, as well as all that Spain possesses on the continent of North America to the east or to the south-east of the river Mississippi."

Under this treaty England entered into possession of West
305 Florida, proclaimed its boundaries, and held it as her own, without dispute or protest, until Spain, a party to the general war then raging both in Europe and America, conquered it by military force, and held it in armed occupation till, in the definitive treaty of peace of 30th January, 1783, England retroceded to her East Florida, and confirmed her with guarantee in possession of West Florida. This fact was perfectly well known to the United States before the cession of Louisiana, and was recognized by treaty with Spain. In Mr. Madison's instructions to Messrs. Livingston and Monroe, on the 2d March, 1803, he says:

"The islands within six leagues of the shore are the subject of a British proclamation in the year 1763, subsequent to the cession of the Floridas to Great Britain by France, which is not known to have ever been called in question by either France or Spain." (2 For. Rel., 542.)

In the treaty between Spain and the United States, on the 27th October, 1795, the 2d article provides that "the southern boundary of
306 the United States, which divides their territory from the Spanish colonies of East and West Florida, shall be designated by a line beginning on the river Mississippi, at the northernmost part of the thirty-first degree of latitude north of the equator, which from thence shall be drawn due east," &c. The 4th article of the same treaty declares that "the western boundary of the United States, which separates them from the Spanish colony of Louisiana, is in the middle of the channel or bed of the river Mississippi."

Numerous other articles in the same treaty designate, with the same distinctive particularity, the different provinces of Spain, which contiguous with our territory: one, "the Spanish colony of Louisiana," bounded by the Mississippi River, but including the island of Orleans; the other, "the Spanish colonies of East and West Florida, beginning on the river Mississippi."

These different colonies, known by these distinct appellations to England, to France, to Spain, and to the United States, were
307 in possession of Spain in the year 1800. Her title to the Floridas was derived from England, under the treaty of 1783; her title to Louisiana was derived from France, under a secret treaty, dated 3d November, 1762, in which it is described as "the whole country known by the name of Louisiana, together with New Orleans and the island on which the said city is situated."

Spain, thus in possession of Louisiana and the two Floridas, with titles derived from different sources, and at different dates, on the 1st October, 1800, by treaty with France, agrees, six months after the full and entire execution of the conditions and stipulations relative to the Duke of Parma, "to retrocede* to the French republic the colony or province of Louisiana, with the same extent that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other states."

308 It seems impossible to give two meanings to this stipulation. For more than a generation the lines of demarcation between Louisiana and the Floridas had been settled by a treaty, to which both the contracting powers had been parties. Louisiana and Florida were

* The French word "retro-ceder" is erroneously translated "cede" in the English text of the treaty of 1803. As the treaty of 1800 between France & Spain was in French, the French text must of course prevail.

as distinctly known in 1800 as now in 1858. The contract on its very face professes to give back, to retrocede, to return to France, what Spain had received from France. But the Floridas had been acquired from England. As if to place the matter beyond a possibility of doubt, or even quibble, Louisiana is retroceded, such as it should be, "after the treaties subsequently entered into between Spain and other States." Those subsequent treaties have already been cited; they were made, one with England in 1783, the other with the United States in 1795; and in both Louisiana is separated from the Floridas as a distinct colony, whose eastern boundary is the Mississippi, with the solitary exception of the island of New Orleans.

309 The only argument ever offered by the United States against so plain a proposition was based on that clause of the description which speaks of Louisiana with the same extent "that it had when France possessed it." Our minister contended that [that], in order to satisfy this clause of the description, they had a right to go back behind the treaty of 1763, revive the claims of France as they existed before the settlement made in that treaty, and thus carry on pretentions eastward to the Perdido.

The committee cannot but conclude that these pretensions were wholly unfounded; that they were a mere afterthought has already been made apparent by the correspondence of our ministers. Our government knew, long before its acquisition of Louisiana, that the Floridas had not been transferred by Spain to France. Mr. Livingston's letters are constantly filled with statements of his efforts to prevent Spain from making a transfer. He states that the French were ignorant that the

310 Floridas were not included in their purchase till he proved it to them; but whilst this assertion shows the knowledge of our govgovernment, it is apparent that Mr. Livingston had been deceived by the French diplomatist; for, in the letter of Mr. Talleyrand, we discover that in 1802 "General Bournonville was charged to open a new negotiation with Spain for the acquisition of the Floridas." It appears to your committee, on a careful review of the whole subject, that no candid mind can resist the conclusion that, however justifiable may have been the pretensions of our government on the score of policy, and as an effect to the unjust encroachments of Spain in other quarters, and to her spoliation of our commerce, the territory of West Florida was not acquired by the cession from France in 1803, but was de jure an appanage of the Spanish crown. If this conclusion be correct, the titles of the memorialists are perfect, and ought to be confirmed.

311 But whether or not the foregoing views of the committee shall meet the concurrence of the Senate, no doubt exists of the fact that Spain was sovereign de facto of the disputed territory at the date of the sales and grants now under consideration. On this branch of the subject a short diversion will be useful, by way of episode, as explanatory of the reasons why the treaty of St. Ildefonso was kept secret, and Spain left in possession of Louisiana until the cession to the United States.

By that singular document, France engaged to "procure" for his royal highness the Duke of Parma (who had married a Spanish princess) as much territory adjacent to that which he then held, as should raise the number of his subjects to a million, and give him right to the title of king. France guarantied the assent of the various powers and states interested, and the occupation of the territory contemplated by the Duke of Parma, as soon as peace was confirmed between France and Austria.

312 The territory designated by the treaty is that of Tuscany, in case France should succeed in obtaining it from Austria, under pending negotiations, or the three Roman ecclesiastical provinces, or any other continental provinces of Italy that would "form a rounded estate."

Spain was to retrocede Louisiana six months after the full execution of these stipulations in favor of the Duke of Parma. Napoleon complied partially with his engagements, by establishing the Duke of Parma as King of Etruria; but Spain naturally entertained doubts of her own ability or that of the King, to maintain possession of the conquered territory, without some other guaranty than the pleasure of the conqueror; hence her tenacious adherence to her possession of Louisiana until guaranties of the permanence of the European equivalent were furnished; hence her protest against the acquisition of Louisiana by the United States, at first urgently maintained, but soon afterwards with-
313 drawn by the influence of France.

Her distrust was not unfounded; Napoleon, within a short period, withdrew from the King of Etruria both his title and his possessions. The states of Parma and Placentia were incorporated as the 28th military department of France, and afterwards conveyed to the Empress Marie Louise, and the prince, her son, in full property; Tuscany was added to France as the kingdom of Taro, and the King of Etruria transferred to the western coast of Europe, and made King of Northern Lusitania. Thus Spain had been deprived of the equivalent stipulated for Louisiana, and Napoleon had sold it for seventy-five millions of francs. It is not very surprising that he should be dissatisfied with the arrangements thus made by the despotic chieftain of France, nor that she repulsed with unyielding pertinacity the American claim to extend the eastern boundary of Louisiana.

The nature of the treaty of St. Ildefonso was such as to make it
314 imperative on the contracting powers to leave Spain as the ostensible owner of Louisiana, as its sovereign de facto, and as such to leave her with power to make valid sales of land in the territory east of the Mississippi, even if it were really included in the cession of Louisiana.

How could such a treaty be revealed without defeating its own objects? France was parcelling out provinces held by other powers; it was promising that kings and emperors should do its biddings; it was covenanting to make and unmake monarchs, and a bare suspicion of the terms of the contract would have united the whole continent in opposition to its execution.

At the same time it is to be observed that the treaty does not cede Louisiana to France in presenti. It promises a retrocession in futuro, "six months after the full compliance with the stipulations in favor
315 of the Duke of Parma." Spain does not, by its terms, strip herself of one attribute of her sovereignty; no limitation is imposed on her power to sell and grant lands in the ceded territory, any more than on her power to administer justice, or exercise any other right of eminent domain. She remains sovereign de jure as well as de facto, until six months shall have elapsed after the compliance with the stipulations in favor of the Duke of Parma; after the lapse of those six months, she will no longer be sovereign de jure, but she will remain so de facto till the delivery of possession; or, at all events, till notice shall be given of the existence of the treaty.

Hence it may readily be perceived why Mr. Marbois professed ignorance of the extent of the cession; why Talleyrand said that nothing

had been positively done in regard to boundary; why Napoleon said that if obscurity did not already exist in the treaty with us, it would, perhaps, be good policy to create it.

Spain was thus left designedly in possession of Louisiana as
316 sovereign de facto until its cession to the United States. Salcedo arrived in New Orleans in June, 1801, with a commission from the King of Spain as governer of the provinces of Louisiana and West Florida, and his predecessor, the Marquis of Casa-Calvo, sailed for Havana. It was not till the end of March, 1803, that Laussat arrived, as colonial prefect, appointed by France, and announced by proclamation that General Victor, who had been appointed captain general of the colony, would arrive towards the middle of April. On the 18th May Salcedo and Casa-Calvo (the latter having returned from Havana for the purpose) issued their proclamation as commissioners appointed to deliver Louisiana to France. In this proclamation it was stated "that the limits on both sides of the river Mississippi should continue as they remained by the 5th article of the definitive treaty of peace concluded at Paris on the 10th December, 1763; and accordingly the settle-
317 ments from the Bayou Manchac, as far as the lines which separated the dominions of Spain and those of the United States, should remain a part of the monarchy of Spain and be annexed to the province of West Florida." No objection was made by the French prefect, and the historian, Judge Martin, continues:

"Everything seemed now ready, and the arrival of Victor, the commissioner of France, for receiving possession, was hourly expected. Every one had his tri-colored cockade ready to be stuck on his hat as soon as the Spanish flag was lowered and the French hoisted, when a vessel from Bordeaux brought accounts of the sale of the province by Bonaparte to the United States." (2 Martin's His. La., 189, 190.)

On the 31st October, 1803, Congress authorized the President to take possession of the Territory. The President appointed Governor Claiborne and General Wilkinson; Napoleon appointed Laussat commissioner, in lieu of Victor, to receive possession from Spain and deliver it to the United States; and on Wednesday, the 30th November,
318 1803, Laussat having exhibited to Salcedo an order from the King of Spain for the delivery of the province, the keys of New Orleans were delivered to Laussat, the Spanish colors hauled down, and those of France displayed in their place. On Monday, the 20th December, 1803, possession was in like manner delivered by Laussat to the American ministers, who had arrived a few days before.

The delivery of possession being thus confined to the Iberville on the east, both by Spain to France and by the latter to the United States, Spain remained in possession of the country between the Iberville and Perdido as its sovereign de facto, and with claim of sovereignty de jure, until long after the sales and grants of the lands now claimed by the memorialists.

The memorialists state that the United States acknowledged this actual possession and occupancy of West Florida by Spain in every manner in which such an acknowledgment could be made; "that
319 they paid duties at Mobile and Pensacola in the Spanish custom-houses for their own goods sent by government itself to their troops in Alabama and Georgia; and that in the year 1812, even after Congress had annexed West Florida to the contiguous territory, a vessel was libelled in the United States court in Alabama because she came from Mobile, then in possession of Spain, to Fort Stoddard, contrary to the provision of the embargo laws. She was acquitted, and the Secre-

tary of the Treasury ordered an appeal, because Mobile was in possession of Spain, and a foreign port. "If, however, any further evidence were required to prove the continued occupation of West Florida by Spain as sovereign de facto, with the acquiescence of the United States, the history of the year 1810 puts the fact beyond controversy.

In the summer of that year a number of the inhabitants of West Florida marched, of their own authority, on Baton Rouge, captured the fort, then in posssion of Spain, declared their independence, framed a constitution, and elected Fulivar Skipwith governor.

320 In their declaration of independence they attest the loyalty with which they have served their king and preserved his territory for him, and give their reasons for declaring their independence. They then sent a communication to the President asking to be annexed to the Union. On the receipt of this communication the President issued a proclamation, in which he declared that the United States had always considered the territory in question as belonging to them; "that the acquiescence of the United States in the temporary continuance of said territory under the authority of Spain was not the result of any distrust of their title," but was occasioned by conciliatory views; that "acts of Congress, though contemplating a present possession by a foreign authority, have contemplated also an eventual possession by the United States," and he therefore authorized Governor Claiborne
321 to take possession of the territory. The proclamation added, that the territory, "in the hands of the United States, will not cease to be the subject of a fair and friendly negotiation and adjustment." (3 Foreign Relations, 397.)

Under this state of facts, your committee think it would be a violation of every principle of justice and national law to confiscate titles acquired from Spain by her own subjects, in territory possessed by her de facto, with the acquiescence of the United States, and claimed by her as being hers de jure. How could it be expected that her own subjects should doubt or question her right to convey the soil under circumstances like those just narrated? No case has ever come before the notice of the committee which more imperatively demands the application of the principle sanctioned by the law of nations, that private individuals may safely deal with the sovereign de facto, and that their rights are not affected by any subsequent determination that the sovereignty de jure is in another power.

Chancellor Kent says: "The national character of the place
322 agreed to be surrendered by treaty continues as it was under the character of the ceding country, until it be actually transferred. Full sovereignty cannot be held to have passed by the mere words of the treaty without actual delivery. To complete the right of property, the right to the thing and the possession of the thing must be united. This is a necessary principle in the law of property in all systems of jurisprudence." (1 Kent, 177.)

In treating this very disputed territory, the Supreme Court of the United States said, in De la Croix vs. Chamberlain, (12 Wheaton, 600:) "The United States have never, as far as we can discover, distinguished between the concessions of land made by the Spanish authorities whilst Spain was in the actual possession of it, from concessions of a similar character made by Spain within the acknowledged limits."

In Rhode Island vs. Massachusetts, (12 Peters, 749,) the same
323 court says: "Grants by a government de facto of parts of a disputed territory in its possession are valid against the State which had the right."

The committee, therefore, conclude that even if the United States had the right to the disputed territory, the grants in question made by the sovereign in possession were valid, and conveyed a perfect title to the grantees.

Whatever may be thought, however, of the positions heretofore assumed by the committee, there remains a third ground, in which the memorialists assuredly may rest their claims with entire security.

They are protected by the faith of treaties. On the 22d February, 1819, the long-pending controversy was closed. In the second article of the treaty made on that day "his Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida."

Article 8. "All the grants of land made before the 24th January, 1818, by his Catholic Majesty, or by his lawful authorities
324 in the said territories, ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty. All grants made since the 24th January, 1818, when the first proposal on the part of his Catholic Majesty for the cession of the Floridas was made, are hereby declared and agreed to be null and void."

It will naturally excite surprise that, in the face of such a treaty stipulations, the rights of the memorialists should require any action on the part of the government. What higher title, it may be asked, can the memorialists desire than a treaty title, one which the Constitution of the United States declared to be equal in dignity to the supreme
325 law of the land? The answer to so natural an inquiry will soon present itself in the progress of this report; but, in the mean time, the committee deems it proper to present some extracts from the negotiations in relation to this clause, which will render palpable its true intent.

From the period when our government first put forward its pretensions over the disputed territory, it had been solicitous to prevent the value of its alleged acquisition to be impaired by any grant of the soil; and this policy found expression in the 14th section of the act of 26th March, 1804, declaring "all grants for lands within the territories ceded by the French republic to the United States, by the treaty of 30th April, 1803, the title whereof was, at the date of the treaty of St. Ildefonso, in the crown government or nation of Spain, and every act and proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever
326 authority transacted or pretended, be, and the same are hereby declared to be, and to have been, from the beginning, null, void, and in no effect in law or equity."

The committee cannot refrain from interrupting for a moment the thread of their argument, for the purpose of a passing comment on the monstrous injustice to private rights, apparent on the very face of this law which confiscated, or attempted to confiscate, titles acquired in good faith, at any date after the 31st of October, 1800, regardless of the fact that by the very terms of the treaty of St. Ildefonso, made on that day, Spain did not seize her rights over Louisiana, but only promised to cede them at a future date, viz., six months after certain conditions should be accomplished, and regardless of the further fact that even this promise of cession was carefully kept secret from the whole world, so as to render it impossible for the grantee even to suspect that the power

327 in possession of the territory de facto had parted, or promised to part, with any of its rights of eminent domain; but the committee forbear to enlarge on the subject because it does not bear on the precise point now under consideration.

When negotiations, long interrupted, were renewed in 1818, between John Quincy Adams and the Chevalier de Onis, a proposition was made by the former for a settlement of all outstanding difficulties with Spain, including not only the eastern boundary, but the western boundary of Louisiana, and the claims of our citizens to indemnity for spoliations.

On the 16th January, 1818, his propositions were in these words:

"1. Spain to cede all her claims to territory eastward of the Mississippi.

"2 and 3. * * * *

"4. * * * * * * No grants of land subsequent to the 11th August, 1802, to be valid." (3. Am. State Papers, For. Rel., 464.)

On the 24th January, 1818, the Spanish minister answered:

328 "Nor can I omit to declare to you, sir, that the pretension of annulling the grants of lands in Florida, since August, 1802, would be in opposition to all the principles of justice. These grants are made in a lawful manner," &c., &c., &c.

Mr. Adams was put on his guard by a letter from Mr. Ewing, our minister, dated at Madrid, on the 10th February, 1818: "The King has lately made large grants of land in East Florida to several of his favorites, and, I am credibly informed that within these few days he has, by a sweeping grant, given all the remainder to the Duke of Alagon, captain of his guards, and the Count of Punon Rostro, one of his chamberlains. This is perhaps his mode of preparing for a cheap cession of the territory to the United States." (3. For. Rel., 509.)

On the 26th April, 1818, he again writes, that in reference to a cession of Florida, in compensation of American claims, he had told the Spanish minister that these claims would have to be paid out of

329 the sale of the lands. "Now, the King had lately given all those lands away, (as I had duly informed my government;) to complete the transaction, it would therefore be absolutely necessary that the whole of those grants be cancelled." And on 14th May, 1818, he announces, "The council sent orders to the Duke of Alagon and the Count of Punon Rostro, directing them not to make sales of the lands granted to them." (3. For. Rel. pp. 511-'12.)

On the 18th July, 1818, Mr. Ewing says to Mr. Pizarro, the Spanish secretary of state, "that it is quite certain that the United States cannot receive Florida as indemnity for its reclamations, if all the cessions to individuals, since the date of the convention, (1802,) are not annulled." (3. For. Rel., 516.)

Finally, the following are the propositions of the negotiators who concluded the treaty in Washington. The Chevalier Onis proposed, on 24th October, 1818, this clause:

"His Catholic Majesty, * * * * to put an end to the differences which now exist between the two government, cedes to them

330 (the United States) in full property and sovereignty the provinces of East and West Florida, with all their towns and forts. * * * * The donations or sales of lands, made by the government of his Majesty, or by legal authorities, until this time, are nevertheless to be recognized as valid." (3 For. Rel., 530.)

Mr. Adams answers, 31st October, 1818: "Neither can the United States recognize as valid all the grants of land until this time. * *

It is well known to you, sir, that notice has been given by the minister of the United States in Spain to your government, that all the grants of land lately alleged to have been made by your government within those territories must be cancelled, unless your government should provide some other adequate fund from which the claims above referred to of the United States and their citizens may be satisfied." Mr. Adams then proposes "that all grants of land in any part of the territories to be ceded by Spain to the United States, subsequent to the year 1802, are to be held null and void." (Page 531.)

331 Don Onis replies, 16th November, 1818: "To this modification, in its absolute sense, I cannot assent, inasmuch as it is offensive to the dignity and imprescriptible rights of the Crown of Spain, which, as the legitimate owner of both the Floridas, had a right to dispose of those lands as it pleased; and further, as the said modification would be productive of incalculable injury to the bona-fide possessors who have acquired, settled, and improved those tracts of land.

"The extent of what I can agree to is, that the late grants made by his Majesty in the Florida, since the 24th January last, the date of my first note, announcing his Majesty's willingness to cede them to the United States, shall be declared null and void." * * * (Page 532.)

Mr. Onis then submitted a draught of an article, and Mr. Adams a counter-draught, the article being No. 9 in the projet of a treaty by Mr. Onis, and No. 8 in the counter-projét of Mr. Adams.

Mr. Onis.—Article 9.

All the grants of land made by his Catholic Majesty, or by his legitimate authority in the aforesaid two territories of Florida, and others which his Majesty cedes to the United States, shall be confirmed
332 and acknowledged as valid, excepting those grants which may have been made after the 24th January of last year, the date that the first proposals were made for the cession of these provinces, which shall be held null, in consideration of the grantees not having complied with the conditions of the cession.

Mr. Adams.—Article 8.

All grants of land made by or in the name of his Catholic Majesty in the aforesaid territories, after the 24th January, 1818, shall be null, the conditions of the said grants not having been performed by the grantees. *All* grants made before *that date* by his Catholic Majesty, or by his legitimate authorities in the said territories, *the conditions of which shall have been performed by the grantees, according to the tenor of the respective grants* and *none other*, shall be confirmed and acknowledged as valid.

When Mr. Adams's counter-projét appeard, the Chevalier Onis said, on this article, that it could not be varied from what was con-
333 tained in his projét, as the object of the last clause therein is merely to save the honor and dignity of the sovereignty of his Catholic Majesty, and on this objection Mr. Adams agreed to the chevalier's proposal, with the following explanation: "That all grants of land which shall not be annulled by this convention are valid to the same extent as they are binding on his Catholic Majesty." (3 For. Rel., 619-'20-'21.)

By comparing these different projéts, the words in italics in the

counter-projét of Mr. Adams, and finally the words just quoted, the whole purpose of the clause is apparent. The United States were guarding themselves from any admission of the validity of such enormous colonization grants as were usually made by Spain, on condition of settlement and cultivation, of which they had recently been warned in the examples of the grants to the Duke of Alagon and Count of Punon Rostro. There was no danger as regarded bona-fide sales or grants to setters. Hence the requirement of Mr. Adams to insert
334 words authorizing the United States to avail themselves of a non-compliance with the conditions by grantees; hence his insertion of the provision that the titles should have the same validity against the United States as against Spain.

Before the ratification of the treaty the United States, however, required of Spain a specical acknowledgment of the nullity of the three principal grants made subsequent to the date indicated in the treaty, and it was accordingly ratified on the 24th October, 1820, with a special declaration that the three grants made in favor of Alagon, Punon Rostro, and Vargas were not ratified by the treaty. Now, the grant to Vargas was of land west of the Perdido River, in the disputed territory, and the inference is irresistible that, in the opinion of the government, the title of Vargas would have been ratified by the treaty, unless excepted by special provision.

The question again recurs, How happens it that the memorialists require any action on the part of Congress to impart validity to grants
335 thus recognized as perfect by the most solemn of all the public acts of a nation—a treaty duly ratified? The answer is to be found in the adjudications of the Supreme Court of the United States.

In the case of Foster and Elam vs. Neilson, (2 Peters, 396,)which involved the title to a tract of land within this disputed territory, the Supreme Court held the following propositions to be sound in law, viz:

1st. That Congress having, by the act of 1804 and other acts, asserted title to this disputed territory under the treaty of cession of Louisiana, "it is the province of the court to conform its decisions to the will of the legislature;" the question being one of disputed boundary between nations, in which "it is scarcely possible that the court of either country should refuse to abide by the measures adopted by its own government."

2d. That as, by the treaty of 1819, the King of Spain had ceded to the United States "all the territories which belong to him to the eastward of the Mississippi, known by the name of East and West Florida," the court was without power to consider the disputed territory as in-
336 cluded in this cession, because the United States had always claimed that this disputed territory did not "belong to him," and that the court was not authorized to question this claim, which was a political one, and did not present a judicial question.

3d. That the eighth article of the treaty did not proprio rigore confirm the titles embraced within its terms, but merely pledged the faith of the nation that Congress would confirm them.

In the case of the United States vs. Arredondo, (6 Peters, 691,) the second of the above propositions was again affirmed, the court stating "that the settlement of boundaries was not a judicial but a political question; that it was not its duty to lead but to follow the action of the other departments of the government;" "that however individual judges might construe the treaty of St. Ildefonso, it is the province of the court to conform its decisions to the will of the legislature;" but, in the same case the court also held that, under the treaty of 1819, the

337 cession to the United States was only of land not previously granted by the crown, (page 738,) and that private titles were confirmed by the words of the treaty itself, which excepted them from the general grant to the United States in all other parts of Florida.

The third proposition of the court in Foster & Elam vs. Neilson was (after being shaken in Arredondo's case) deliberately overruled in Percheman's case, (7 Peters, 58.) Finally, in the year 1850, an attempt was again made in the case of the United States vs. Reynes (9 Howard, 127) to induce the Supreme Court to take judicial cognizance of the titles of the unfortunate proprietors who had, half a century before, bought and paid for their lands within this disputed country, from the sovereign who held it and claimed it as owner, and in whose possession the United States had avowedly acquiesced for political reasons. The court again said, "Whether, by the treaties of St. Ildefonso and of Paris the territory south of the 31st degree of north latitude was ceded to the United States, is a question into which this court will not
338 now inquire. The legislative and executive departments of the government have determined that the entire territory was so ceded. This court have solemnly and repeatedly declared that this was a matter peculiarly belonging to the cognizance of those departments, and that the propriety of their determination it was not within the province of the judiciary to contravene or question."

It thus appears that the memorialists, by the action of the government, are left without even a chance of trying their title. Congress passes acts referring them to the judiciary. The judiciary decides that it cannot examine the merits of their claim, because those merits depend on a political not a judicial question. Banded backwards and forwards from one department of the government to the other, their rights have actually been sported with for fifty years. The violated faith of treaties calls aloud for redress. It is a scandal upon public justice that this state of things should endure a day longer. The whole case may be stated in a word. The United States, after years of dispute about
339 a boundary with Spain, make a treaty by which Spain cedes her rights on the express condition that her grants shall be respected, and because she says she cedes the territory which belongs to her, the court holds that it is not at liberty to carry out the treaty until Congress will be pleased to say that the disputed territory belong to her.

It is plain, from the language of the court in the cases cited, that the judges really thought Spain was right in the controversy. If they had thought our government was right, it was very simple & easy to say so. The very excuse given for not deciding the merit shows whence the embarrassment of the court arose.

The committee will not assume to say that the court was wrong in declining to decide the cases submitted to it according to the very plain meaning of the treaty, as expressed on its face, and in the correspondence of the diplomatists who negotiated it; but they feel bound to say that there is no possible excuse for any further refusal by Congress to redeem the plighted faith of the nation.

340 The objects and purposes contemplated by the eminent statesmen who conducted our negotiations with France and Spain have long since been accomplished. The acquisitions which their sagacious foresight deemed so indispensable to the safety, progress, and prosperity of our country have long since been secured. It is not for us to question the policy which urged so vigorously pretensions that, to say the least, were exceedingly doubtful.

If these great national purposes were still in jeopardy, if all their

momentous consequence were still at hazard, a stern political necessity might excuse, if it could not justify, a pitiless sacrifice of individual rights. But that day has happily passed. Neither France nor Spain now hold a foot of soil on the North American Continent. The battle has been fought and won, and not even political expediency can now be pleaded in excuse for the confiscation of private rights.

Your committee report a bill for the relief of the memorialists, and include in it certain other claims referred to them, which rest on the same principles as those involved in the claim of the memorialists.

341 *Order fixing cause for trial.—Extract from the minutes of March 30th, 1869.*

HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

On motion of M. Taylor, att'y for p'ffs, ordered, that this cause be assigned for hearing on 20th April, 1869, at 11 a. m., and that the defendants be notified thereof.

Order fixing cause for trial.—Extract from the minutes of April 22d, 1869.

HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

342 On motion of M. Taylor, attorney for p'ffs, ordered, that this cause be assigned for hearing on 7th May, 1869, at 11 a. m., and that the defendants be notified hereof.

Cause continued by consent.—Extract from the minutes of May 7th, 1869.

HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

For want of time, it is agreed, by consent, that the cause be taken up on the 14th inst., at 11 a. m.

Cause continued by consent.—Extract from the minutes of May 14th, 1869.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 5.

343 For want of time, the counsel agreed to take up the case on 21st instant, at 11 a. m.

Cause continued by consent.—Extract from the minutes of May 21st, 1869.

HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

For want of time, it is agreed that the cause be continued till the 28th instant, at 11 a. m.

Submission—Extract from the minutes of May 28th

THE HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

344 This cause was called for trial—Miles Taylor for plaintiffs, P. H. Morgan, dist. att'y, for def'ts—when the same was submitted to the decision of the court upon the pleadings and the evidence in the record, and upon briefs to be furnished within a reasonable delay.

Order, cause submitted.—Extract from the minutes of June 23rd, 1869.

HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

The court having consented to hear Louis Janin, esq., counsel of record herein, the cause was taken up—L. Janin for plaintiffs, P. H. Morgan, U. S. dist. att'y—and after hearing the evidence, admission, and
345 argument, the court took time to advise.

Judgment.

United States district court.

THE HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 5, land docket.

This suit was instituted under the 11th section of an act of Congress of June 22d, 1860, entitled "An act for the final adjustment of private land claims in the States of Florida, Arkansas, and Missouri, and for other purposes."

The plaintiffs are the widow and the heirs of John Lynd, who, in 1806, bought from Juan Ventura Morales, then intendent of the Spanish
346 province of West Florida, 32,025 superficial arpents of land.

This land is situated in that part of the present State of Louisiana which remained in the possession of the Spanish authorities until 1810. This territory, between the Mississippi River to the west, the Perdido to the east, the Iberville to the south, and the 31st degree of latitude to the north, was a subject of contention between the United States and Spain from the time of the treaty of the 30th of April, 1803, by which the United States acquired Louisiana, to the time of the treaty of Feb'ry 22d, 1819, by which Spain transferred the two Floridas to the United States; the United States maintaining that this disputed territory was included in the transfer of Louisiana, and Spain, on the
347 other hand, maintaining that it was a part of the Spanish province of West Florida, with which Spain parted only by the treaty of 1819.

Between 1803 and 1810, Juan Ventura Morales, the Spanish intendent of the province of West Florida, acting on behalf of his government, made a number of sales of land in this territory. The effect of these sales as against the United States has been discussed by the Supreme Court of the United States in the cases of Foster and Elam vs. Neilson, (2 Pet., 253;) Garcia vs. Lee, (12 Pet. 511;) and Reynes vs. the United

momentous consequence were still at hazard, a stern political necessity might excuse, if it could not justify, a pitiless sacrifice of individual rights. But that day has happily passed. Neither France nor Spain now hold a foot of soil on the North American Continent. The battle has been fought and won, and not even political expediency can now be pleaded in excuse for the confiscation of private rights.

Your committee report a bill for the relief of the memorialists, and include in it certain other claims referred to them, which rest on the same principles as those involved in the claim of the memorialists.

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vs.
THE UNITED STATES. } No. 5.

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HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

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Cause continued by consent.—Extract from the minutes of May 14th, 1869.

HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 5.

343 For want of time, the counsel agreed to take up the case on 21st instant, at 11 a. m.

Cause continued by consent.—Extract from the minutes of May 21st, 1869.

HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

For want of time, it is agreed that the cause be continued till the 28th instant, at 11 a. m.

Submission—Extract from the minutes of May 28th, 1869.

THE HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

344 This cause was called for trial—Miles Taylor for plaintiffs, P. H. Morgan, dist. att'y, for def'ts—when the same was submitted to the decision of the court upon the pleadings and the evidence in the record, and upon briefs to be furnished within a reasonable delay.

Order, cause submitted.—Extract from the minutes of June 23rd, 1869.

HEIRS OF J. LYND
vs.
THE UNITED STATES. } No. 5.

The court having consented to hear Louis Janin, esq., counsel of record herein, the cause was taken up—L. Janin for plaintiffs, P. H. Morgan, U. S. dist. att'y—and after hearing the evidence, admission, and
345 argument, the court took time to advise.

Judgment.

United States district court.

THE HEIRS OF JOHN LYND
vs.
THE UNITED STATES. } No. 5, land docket.

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The plaintiffs are the widow and the heirs of John Lynd, who, in 1806, bought from Juan Ventura Morales, then intendent of the Spanish
346 province of West Florida, 32,025 superficial arpents of land.

This land is situated in that part of the present State of Louisiana which remained in the possession of the Spanish authorities until 1810. This territory, between the Mississippi River to the west, the Perdido to the east, the Iberville to the south, and the 31st degree of latitude to the north, was a subject of contention between the United States and Spain from the time of the treaty of the 30th of April, 1803, by which the United States acquired Louisiana, to the time of the treaty of Feb'ry 22d, 1819, by which Spain transferred the two Floridas to the United States; the United States maintaining that this disputed territory was included in the transfer of Louisiana, and Spain, on the
347 other hand, maintaining that it was a part of the Spanish province of West Florida, with which Spain parted only by the treaty of 1819.

Between 1803 and 1810, Juan Ventura Morales, the Spanish intendent of the province of West Florida, acting on behalf of his government, made a number of sales of land in this territory. The effect of these sales as against the United States has been discussed by the Supreme Court of the United States in the cases of Foster and Elam vs. Neilson, (2 Pet., 253;) Garcia vs. Lee, (12 Pet. 511;) and Reynes vs. the United

States, (9 Howard, 127.) The latter two cases only affirm the decisions of the first case, and establish no new proposition, except that in Reynes's case it was held that a suit brought by Reynes under an act of
Congress of June 17th, 1844, entitled "An act to provide for
348 the adjustment of land claims," could not be maintained, because
that act applied only to inchoate or imperfect titles, and Reynes' was a perfect title. Under the same act the present plaintiffs brought a suit in the district court for the eastern district of Louisiana, which had the same result as Reynes'.

The leading case is that of Foster and Elam vs. Neilson, (2 Pet., 253,) decided by Chief Justice Marshall. Were the present legislation the same as that existing when that case was decided, the result of this case would necessarily be the same as that of Foster & Elam, and adverse to the plaintiffs. It becomes, therefore, necessary to examine attentively what was decided in that case, and what change has taken place in the
legislation of Congress. All these titles seem to have been of
349 exactly the same nature; to have differed only in the names
of the parties, and the description of the land, and to have been composed of an application to the intendant for a purchase of land, an order of survey, a survey by the government surveyor, an appraisement of the land, a receipt for the payment of the price, and a title in full ownership by the intendant, in the name of the King of Spain. The origin of these titles, and the controversy to which they gave rise, is best stated in the case of Foster & Elam vs. Neilson, and need not be repeated here. In that case it was contended, on the part of plaintiffs, that the territory out of which their grant was carved was undoubtedly a part of the Spanish province of West Florida, and that, besides, the
United States have bound themselves, by the treaty with Spain
350 of the 22nd of Feb'ry, 1819, to maintain and respect the grants
or sales made by Spain within that territory.

The decision in Foster and Elam vs. Neilson was rendered in January, 1829.

On February 27th, 1832, the House of Representatives called on the Secretary of State for a report on this same subject; and on the 22d of June, of the same year, the Secretary of State made an elaborate report, to the effect that the Spanish claim to this territory, when she made such sales, was valid, and the American claim to it unfounded, and that these titles were confirmed by the treaty of Feb'ry 22nd, 1819. (American State Papers, Pub. Lands, vol. V. Duf Green's edition, p. 626.)

In February, 1858, the Committee on Private Land Claim of
351 the Senate of the United States made a report to the same effect.

But this controversy cannot be renewed, in the present case, before this court, which is bound by the ruling of the Supreme Court in Foster and Elam's case, where it was held that (2 Pet., 307) "in a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government."

On the subject of the recognition of these grants by the 8th section of the treaty of Febr'y 22nd, 1819—that decision is very explicit—(p. 314) the words of the article are, that all grants of land made before the 24th of January, 1818, by his Catholic Majesty, shall be ratified and confirmed
to the persons in possession of the lands, to the same extent
352 that the same grants would be valid if the territories had re-
mained under the dominion of his Catholic Majesty.

Then the court puts the question, in which seems to lie the decision of the present case, (p. 314,) "Do these words act directly on the grants,

so as to give validity to those not otherwise valid; or do they pledge the faith of the United States to pass acts which shall ratify and confirm them?"

Ibid. The article under consideration does not declare that all the grants made by his Catholic Majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his dominion. It does not say that these grants are hereby confirmed. Had such been its language, it would have acted directly
353 on the subject, and would have repealed those acts of Congress which were repugnant to it; but its language is, that those grants shall be ratified and confirmed to the persons in possession, &c. By whom shall they be ratified and confirmed?

This seems to be the language of contract; and if it is, the ratification and confirmation, which are promised, must be the act of the legislature. Until such act shall be passed, the court is not at liberty to disregard the existing laws on the subject.

And the court proceeds to say, (p. 315,) that no act of Congress existed by which claims to land in the present State of Louisiana, protected by the the treaty of Febr'y 22d, 1819, could be prosecuted.

Such an act, however, is now in existence. The act of June 22d, 1860, providing for the adjustment of land claims in Florida, Louisiana,
354 and Missouri, (2 Brightley's Dig., 291,) which was renewed for three years by an act of March 2nd, 1867, (Stat. of 1867, p. 544,) expressly authorizes the submission for adjudication of any written title, whether complete or incomplete, emanating from any foreign government, bearing date prior to the cession to the United States, or during the period when any such government claimed sovereignty, or had the actual possession of, the district or territory in which the lands so claimed are situated. The 11th section of that act very distinctly describes the class of claims to which that of plaintiffs belongs, a complete grant, unaccompanied by possession, emanating from a government de facto—this is the only act of Congress that mentions grants made by a government de facto—and the reference to Morales' sales is obvious.

355 The court has, therefore, no doubt that this is one of the claims for the confirmation of which, in the language of Chief Justice Marshall, "the faith of the United States is pledged."

Though the principle is thus recognized, Congress could not, by a direct act, confirm individual claims. It was necessary to ascertain the condition of each title, the parties entitled to it, and the present situation and occupants of the land, particularly as it was not the intention or policy of Congress to disturb the possessors of these lands, who had acquired titles thereto, during the long period which elapsed since these grants were made.

The claimants were, therefore, authorized either to lay their claims before a board of commissioners, or to bring it in the respective district court; and it is provided, by the 6th section of the same
356 act, that if the land has been sold by the United States, or cannot be located, the claimants shall be entitled to certificates of location upon any public lands of the United States, subject to private entry. The locality of the land purchased by the ancestor of the plaintiffs from the Spanish government, and the titles emanating from the government of the United States, under which the same is now held, is very clearly proved by the evidence, and as it is also shown that the whole of this land has been disposed of by the United States, the claim-

ants can only recover the advantages resulting from the 6th section of the act.

It is therefore ordered, adjudged, and decreed that Henrietta Blanc, the widow of John Lynd, Robert S. Lynd, and Rose Lynd, the widow of Robert C. Cammack, have judgment against the United
357 States, for the equivalent of thirty-two thousand and seventy-five arpents, to wit, twenty-seven thousand two hundred and fifty-three $\frac{15}{100}$ acres, to be located upon any of the public lands of the United States subject to private entry, under the 6th section of the said act of Congress of June 22d, 1860.

Judgment rendered July 8th, 1869.

Judgment signed July 10th, 1869.

(Signed) E. H. DURELL, *Judge.*

Petition of appeal.—Filed July 10th, 1869.

To the hon. the judge of the district court of the United States for the district of Louisiana:

The petition of the United States, with respect, shows that a
358 final decree has been rendered against them on the 10th day of July, instant, in the case of the Heirs of John Lynd vs. the United States, No. 5 of the new land docket, under the act 22 June, 1860, by which they are prejudiced, and are advised that there is error therein.

Wherefore they pray that a suspensive appeal be allowed them from said decree, returnable to the next term of the Supreme Court of the United States.

(Signed) J. W. GURLEY,
Acting U. S. Att'y.

Order.

Let an appeal be allowed as prayed for.
July 10th, 1869.

(Signed) E. H. DURELL, *Judge.*

(Here follow 10 maps, marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, page 358.)

359 District court of the United States, dist. of Louisiana.

I do hereby certify that the preceeding 368 pages do contain & form a complete and correct transcript of all the proceedings had, documents filed, and evidence adduced, on the trial of the case of the Heirs of Jno. Lynd vs. the United States, No. 5 of the new land docket of the said court.

In testimony whereof I grant these presents under my signature & the seal of our court, at New Orleans, this 7th day of Oct'r, 1869.

[SEAL.] K. SWAN, *D'y Clk.*

(Indorsement on cover:) No. 275. The United States, appellant, vs. the Heirs of John Lynd, dec'd. Louisiana D. C. U. S.

Filed 25th October, 1869.

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It is therefore ordered, adjudged, and decreed that Henrietta Blanc, the widow of John Lynd, Robert S. Lynd, and Rose Lynd, the widow of Robert C. Cammack, have judgment against the United
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I do hereby certify that the preceeding 368 pages do contain & form a complete and correct transcript of all the proceedings had, documents filed, and evidence adduced, on the trial of the case of the Heirs of Jno. Lynd vs. the United States, No. 5 of the new land docket of the said court.

In testimony whereof I grant these presents under my signature & the seal of our court, at New Orleans, this 7th day of Oct'r, 1869.

[SEAL.] K. SWAN, *Dy Clk.*

(Indorsement on cover:) No. 275. The United States, appellant, vs. the Heirs of John Lynd, dec'd. Louisiana D. C. U. S.

Filed 25th October, 1869.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Appellants*,
vs.
THE HEIRS OF JOHN LYND. } No. 84.

Appeal from the United States District Court for the District of Louisiana.

STATEMENT AND BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

DECEMBER TERM, 1870.

THE UNITED STATES, *Appellants*,
vs.
THE HEIRS OF JOHN LYND. } No. 84.

Appeal from the United States District Court for the District of Louisiana.

STATEMENT AND BRIEF FOR THE UNITED STATES.

This is a proceeding under the act of June 22, 1860, (12 Stat. at Large, 85, *et seq.*,) to establish the appellee's title to certain land, under a grant from the Spanish authorities, in that part of Louisiana lying between the Mississippi and Perdido rivers, and which was claimed and held by Spain as a portion of her province of West Florida, after the cession of Louisiana to the United States, in 1803. The grant in this case was applied for on the 26th of September, 1803, and was completed by the Spanish Intendant, Morales, on the 12th of July, 1806.

This is one of a class of land claims which have frequently been before the court. The United States claimed the territory in question as a part of Louisiana—contending that it was included in the cession from

Spain to France of that province by the treaty of St. Ildefonso, signed October 1, 1800, and consequently was ceded by France to the United States in 1803. Spain claimed that this territory was not included in either treaty, and she actually held possession of the territory until 1810.

By the act of March 26, 1804, section 14, (2 Stat. at Large, 287, 288,) it was enacted "that all grants for lands within the territories ceded by the French Republic to the United States by the treaty of the 30th of April, in the year one thousand eight hundred and three, the title whereof was, at the date of the treaty of St. Ildefonso, in the crown, government, or nation of Spain, and every act or proceeding subsequent thereto, of whatsoever nature, towards the obtaining any grant, title, or claim to such lands, and under whatsoever authority transacted or pretended, be, and the same are hereby declared to be, and to have been from the beginning, null, void, and of no effect, in law or equity." This included the grant in suit.

I.

These claims were first brought before the court in 1829. It was then held, that the controversy between the United States and Spain, in respect to the boundaries of Louisiana, was a political question, and that this court must conform to the action of the political department of the Government, which had always asserted that Spain ceded the territory between the

Perdido and Iberville rivers to France, in 1800, and that, therefore, the 8th section of the treaty of 1819, (8 Stat. at Large, 258,) providing that all the grants of land made before the 24th of January, 1818, by the King of Spain "shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty," did not apply to grants declared void by the statute of 1804, *ubi supra*, because the territory in which they lay was not included within this cession.

Foster *vs.* Neilson, 2 Pet , 253.

Some of the views expressed by the court in Foster *vs.* Neilson, with respect to the treaty of 1819, were materially qualified in subsequent cases, when the original draft of that treaty, in the Spanish language, was brought to the attention of the judges.

United States *vs.* Arredondo, 6 Pet., 691.

United States *vs.* Percheman, 7 Pet., 51.

But in 1838, this court, after careful consideration of the subject, again held that the treaty of 1819 did not apply to grants made within the limits of Louisiana, as they were claimed to exist by the United States, and consequently did not repeal the act of 1804 declaring such grants void.

Garcia *vs.* Lee, 12 Pet., 571.

II.

In 1849 the court decided that the act of June 17,

1844, (5 Stat. at Large, 676,) extending the provisions of the act of May 26, 1824, (4 Stat. at Large, 52,) enabling the claimants to land within the limits of Missouri and Arkansas to institute proceedings to try the validity of their claims, to the territory lying between the Mississippi and Perdido rivers, did not affect the act of 1804, *ubi supra*, or render valid grants of land within that territory declared void thereby.

United States *vs.* Reynes, 9 How., 127.

United States *vs.* Philadelphia and New Orleans, 11 How., 609.

III.

This was the condition of these grants when Mr. Benjamin, as chairman of the Committee of the Senate on Private Land Claims, made an elaborate and able report on the 26th of May, 1858, giving a full history of these claims, and recommending the passage of a bill for the relief of the claimants.

Record, pp. 65, *et seq.*

In consequence of this report, the act of June 22, 1860, (12 Stat. at Large, 85,) was passed. By section one it was enacted "that any person or persons, and the legal representatives of any person or persons, who claim any lands lying within the States of Florida, Louisiana, or Missouri, by virtue of grant, concession, order of survey, permission to settle, or other written evidence of title emanating from any foreign government, bearing date prior to the cession of the United

States of the territory out of which said States were formed, or during the period when any such government claimed sovereignty, or had the actual possession of the district or territory in which the land so claimed is situated, shall be, and they are hereby, authorized to make, application for the confirmation of the title to the land so claimed," by applying to commissioners in the manner specifically set forth in the succeeding sections.

Section 11 of the same act under which this petition brought is as follows:

"*And be it further enacted*, That in any case of such a claim to lands as is hereinbefore in the first section of this act mentioned, where the lands claimed have not been in possession of and cultivated by the original claimant or claimants, or those holding title under him or them, for the period of twenty years aforesaid, and where such lands are claimed by complete grant or concession, or order of survey duly executed, or by other mode of investiture of the title thereto in the original claimant or claimants, by separation thereof from the mass of the public domain, either by actual survey or definition of fixed natural and ascertainable boundaries or initial points, courses, and distances, by the competent authority, prior to the cession to the United States of the territory in which said lands were included, or where such title was created and perfected during the period while the foreign governments from which it emanated claimed sovereignty over or had the actual

possession of such territory, the person or persons, his, her, or their heirs, devisees, legal representatives, or grantees, so claiming such lands, may, at their option, instead of submitting their claim to the officer or officers hereinbefore mentioned, proceed by petition in any district court of the United States, within whose jurisdiction the lands, or any part of the lands, claimed may lie, unless such claim comes within the purview of the third section of this act; to which petition the United States shall be made defendant, and it shall be verified by the oath of the party or parties, and conform to the provisions of section one of this act, and to the practice of such court in chancery, and the Attorney of the United States in such district shall defend against the same for the United States; and the court shall decide the claim valid or invalid, according to the principles established in this act, and decree accordingly. If the decree be against the United States, an appeal shall be entered to the Supreme Court of the United States; and if it be against the claimant or claimants, he or they may take an appeal directly to that court, as of right and course, without affidavit or security other than for costs; and the same shall be adjudged *de novo* in the Supreme Court, as in other cases of appeals thereto in chancery, and as equity and justice and the principles aforesaid may require, which decision shall be final, and patent shall thereupon issue, if the claim be adjudged valid, for so much of the lands claimed as remain unsold, and for so much as may have been sold,

the provisions of section six of this act shall apply and be in force." This act was to remain in force for five years.

IV.

No reference is made in this statute to the act of 1804, which declared grants from the Spanish authorities, after the date of the treaty of St. Ildefonso, void. And the principal question of law apparent upon this record is whether that statute which compelled this court to dismiss the former claims in the cases before cited is repealed?

Repeals by implication of prior statutes are not favored, and courts are reluctant to assume such an intention on the part of the legislature, unless the later statute is so repugnant to the former that it cannot have effect without such repeal of the prior statute.

Dwarris on Stat., (2d ed.,) 533.

Wood *vs.* United States, 16 Pet., 363.

The Reform, 3 Wallace, 633.

In this case, it appears, from former decisions of this court, that there are other claims to lands in Louisiana under grants from *de facto* governments to which this act can apply, besides those made by the Spanish authorities subsequently to the treaty of St. Ildefonso in 1800.

United States *vs.* D'Auterieve, 10 How., 605.

Montault *vs.* The United States, 12 How., 47.

V.

The documentary history of these cases shows that these grants were made by a *de facto* government, and counsel see no reason to question the facts relied upon to establish the grant claimed by the appellees.

A. T. AKERMAN,
Attorney General.

C. H. HILL,
Assistant Attorney General.

Supreme Court of the United States.

DECEMBER TERM—1870.

No. 84.

THE UNITED STATES

vs.

THE HEIRS OF JOHN LYND.

APPEAL FROM THE DISTRICT OF LOUISIANA.

ARGUMENT FOR APPELLEES.

LOUIS JANIN, of Counsel.

P. L. SCHRIFTGIESSER, PRINTER, 309 Eighth st. northwest.

Supreme Court of the United States.

THE UNITED STATES, Appellants,

vs.

THE HEIRS OF JOHN LYND, deceased.

Appeal from the District Court of the United States for the District of Louisiana.

BRIEF FOR THE APPELEES.

The object of this suit is to obtain from the United States the recognition and confirmation of a Spanish land claim in Louisiana, under the provisions of an act of Congress entitled: "An act for the final adjustment of Private Land Claims in the States of Florida, Louisiana, and Missouri, and for other purposes, approved June 22, 1860, 12 Stat. at Large, p. 85.

The land is situated in that part of the present State of Louisiana which remained in the possession of the Spanish authorities after the acquisition of Louisiana by the United States, and until the Spanish garrison of Baton Rouge was expelled by an insurrection in 1810. This section of country lies between the Mississippi river to the west, the Perdido river to the east, the bayou or river Manchac, or Iberville, to the south, and the 31st degree of latitude to the north, and is a part of what was formerly known as the Spanish province of west Florida, and was claimed by Spain as a part of said province, until the whole of West and East Florida was ceded to the United Sta-

tes by the Treaty of February 22, 1819, while at the same time the United States claimed it as territory included in the transfer of Louisiana from Spain to France, and from France to the United States, in 1803.

The title relied on by the plantiffs in this case is of precisely the same description as that of the plantiffs in error in the leading case of Foster and Elam *vs.* Neilson, in 2 Pet. 253, decided by Chief Justice Marshall in 1829.

If the law were the same now as it then was, the decision of this case would be adverse to the original plaintiffs and appellees, and this suit would indeed not have been instituted.

But the law has been materially altered by the aforesaid act of June 22, 1860. We claim that land titles of the description of ours are valid by the 8th section of the treaty between the United States and Spain of February 22, 1819, 8 Stat. at Large, 258. In reference to this article, we beg leave to quote the words of Chief Justice Marshall (2 Pet. 314).

"The words of the article are, that all the grants of land made before the 24th of January, 1818, by his catholic majesty, &c., shall be ratified and confirmed, to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his catholic majesty."

"Do these words act directly on the grants, so as to give validity to those not otherwise valid; or do *they pledge the faith of the United States to pass acts which shall ratify and confirm them?*"

These are the words of the Chief Justice, but the italics are ours.

The Chief Justice then proceeds to say (2 Pet. 314). "Our constitution declares a treaty to be the law of the land. It is consequently to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages

to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract before it can become a rule for the court. The article under consideration does not declare that all the grants made by his catholic majesty before the 24th of January, 1818, shall be valid to the same extent as if the ceded territories had remained under his dominion. It does not say that those grants are hereby confirmed. Had such been its language, it would have acted directly upon the subject, and would have repealed those acts of Congress which were repugnant to it; but its language is that those grants shall be ratified and confirmed to the persons in possession, &c. By whom shall they be ratified and confirmed? This seems to be the language of contract, and if it is, the ratification and confirmation which are promised must be the act of the legislature. Until such act shall be passed, the court is not at liberty to disregard existing laws on the subject."

Elsewhere in this opinion (p.313) the Chief Justice says: "The article (*i. e.* art. 8 of the treaty of 1819) may be understood as if it had been written that 'all the grants of land made before the 24th of January, 1818, by his catholic majesty or his lawful authorities in the said territories, ceded by his majesty to the United States, (except those made to the Duke of Alagon, the Count of Punon Rostro and Don Pedro de Vargas,) shall be ratified and confirmed, &c.' Had this been the form of the original article, it would be difficult to resist the construction that the excepted grants were withdrawn from it by the exception, and would otherwise have been within its provisions. Consequently, that all other fair grants within the time specified were as obligatory on the United States as on his catholic majesty. *One other judge and myself are inclined to adopt this opinion. The majority of the court however think differently.*"

Thus far goes the chief justice on this part of the case. (The italics are ours). But even if the court had been of the same opinion as the chief justice and one other judge concern-

ing the construction of the article, the confirmation of the claim would have encountered another objection in the view entertained by the court that, inasmuch as the Unised States had persistently maintained that the purchase of Louisiana included the territory in which the land claimed is situated, "a question like this respecting the boundaries of nations, is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every county must respect the pronounced will of the legislature." Foster and Elam *vs.* Neilson (2 Pet. 309).

Subsequently, in the Arredondo case, 6 Pet. 691, and particularly in Percheman's case, 7 Pet. 51, the Supreme Court expressed different views concerning that treaty.

In the latter case (p.88) Chief Justice Marshall, speaking of the aforesaid 8th article of the treaty of February 22, 1819, says:

"The treaty was drawn up in the Spanish as well as in the English language. Both are originals and were unquestionably intended by the parties to be identical. The Spanish has been translated, and we now understand that the article, as expressed in that language, is, that the 'grants shall remain ratified and confirmed to the persons in possession of them, to the same extent, &c,' thus conforming exactly to the universally received doctrine of the law of nations. If the English and the Spanish parts can, without violence, be made to agree, that construction which establishes this conformity ought to prevail. If, as we think must be admitted, the security of private property was intended by the parties; if this security would have been complete without the article, the United States could have no motive for insisting on the interposition of Government in order to give validity to titles which, according to the usages of the civilized world, were already valid. No violence is done to the language of the treaty by a construction which conforms the English and Spanish to each other. Although the words 'shall be ratified and confirmed' are properly the

words of contract, stipulating for some future legislative act; they are not necessarily so. They may import that they 'shall be ratified and confirmed' by force of the instrument itself. When we observe that in the counterpart of the same treaty, executed at the same time by the same parties, they are used in this sense, we think the construction proper, if not voidable."

"In the case of Foster and Elam, 2 Peters, 253, this court considered these words as importing contract. The Spanish part of the treaty was not then brought to our view, and we then supposed that there was no variance between them. We did not suppose that there was even a formal difference of expression in the same instrument, drawn up in the language of each party. Had this circumstance been known, we believe it would have produced the construction which we now give to the article. This understanding of the article, must enter into our construction of the act of Congress on the subject."

This reasoning of Chief Justice Marshall in the Percheman case certainly bore out Justice Baldwin, who participated in the decision of both this and the Foster and Elam case, in declaring, in his concurrent opinion in the case of Lessee of Pollard's heirs *vs.* Kibbe, 14 Pet., 390, "that every principle of the case of Foster and Elam *vs.* Neilson, in 2 Peters, 299, 317, adverse to grants in the disputed territory, has since been overruled."

In entire conformity with the views expressed in the passages just transcribed, by Chief Justice Marshall and Justice Baldwin, is the elaborate opinion and argument communicated by Edward Livingston then secretary of State, on the 12th of June, 1832, to the House of Representatives of the United States, in answer to a resolution of that body (See American State Papers, Public Lands, Duff Green's edition, Vol. V, p. 626).

It is a discussion of precisely the questions which are presented in this case, and an argument that can neither be sur-

passed nor equalled. We therefore beg leave to present it as the argument upon which we rely, and to print it entire.

This collection (Duff Green's) being official and printed by the authority of Congress, we have the right to read from it and rely on it as evidence of the *res gesta*—the publication. (Watkins *vs.* Helman, 16 Pet. 25; Bryan *vs.* Forsyth, 19 How. 334; Gregg *vs.* Forsyth, 24 How. 179.

We should perhaps before this have mentioned why this brief enters at the very outset into the discussion of the merits, without having explained the very case before the court. We are certain that nothing can or will be discussed in this case but the title to the land under the treaties and acts of Congress.

The particular circumstances of the case are stated in great detail in the petition; every requirement of the act of June 22, 1860, has been most strictly complied with, and every allegation of the petition is proved by the clearest testimony. To enable the court and the attorney general to test these assertions without trouble, we shall annex to this brief of argument a memorandum, taking up every allegation of the petition and showing by what evidence in the record it is proved. By this arrangement we avoid the interruption of an investigation which is interesting in itself and of great importance in the case.

We now submit, without further remark, this model of forensic discussion.

Communicated to the House of Representatives, June 14, 1832.

DEPATMENT OF STATE,

Washington, June 12, 1832.

The Secretary of State, to whom, on the 22d instant, was referred the resolution of the House of Representatives of the 7th February, 1832, on the expediency of providing by law for the final adjustment of all the claims to land derived from

the former Government of Spain, and its local authorities, in that part of West Florida between the Mississippi and Perdido rivers, from the date of the Louisiana treaty, of 1803, to the proclamation of President Madison, in 1810, either by a confirmation of the titles, or a reference of them to the judiciary, with directions to report to the House of Representatives the recent correspondence between the Spanish Minister and the Secretary of State, with the opinion of the latter upon the justice and validity of these claims, has the honor to report:

That the Government of the United States having, by several acts, asserted their right to all the territory between the Mississippi and the Perdido, under the treaty of 1803, it would be improper to contradict that asserted right, and unnecessary to support it. Assuming, therefore, as the groundwork of this report, that the construction which the United States have put on the treaty of cession is, in this respect, the true construction, and that, by it, they acquired a right to all the land referred to in the resolution of the House, it is equally true that the Spanish Government, from the time the transfer of Louisiana took place, put a different construction upon it, maintained that it did not include any part of the Floridas, refused to deliver the possession of this territory when the rest of the ceded country was transferred to the French, held it when we received the country from France, and kept the whole until the year 1810, when a part of it was wrested from them by an insurrection, and the residue until 1813, when it was forcibly taken by the troops of the United States; and that, during all this period, they exercised an undisturbed jurisdiction over this territory, and disposed by sale of sundry tracts of land, as well to citizens of the United States as to Spanish subjects. For these sales, the proper officer of the Crown received a consideration in money, caused the lands to be surveyed, and gave to the purchasers titles in form.

After West Florida became incorporated into the Union, either as part of the State of Louisiana or of the then Territory

of Mississippi, a board of commissioners was constituted to receive the evidence of title from the claimants to the lands between the Mississippi and the Perdido, and to report the same to the General Land Office, declaring that those who neglected to record their titles should never after receive a confirmation thereof, and that no title, not recorded, should be received in evidence.

But by the act of Congress, entitled "An act for erecting Louisiana into two territories, and providing for the temporary government thereof," it was enacted that all grants for lands ceded by the French Republic to the United States, by the treaty of the 30th April, 1803, the title to which was in the Government of Spain at the date of the treaty of St. Ildefonso, and every proceeding towards obtaining any claim to such lands, made subsequent thereto, should be null and void, with an exception in favor of actual settlers prior to 20th December, 1803, who had obtained a right, under the laws and usages of Spain; but these were to be entitled to not more than six hundred and forty acres of land.

This law precluded the commissioners from allowing any claim under the Spanish grants made in virtue of the sales above mentioned, as they were all of them after the date of the treaty of St. Ildefonso, which was made in the yeer 1801.

Many of the purchasers under the Spanish Government filed their claims; others, deterred by the provisions of the law of 1804, made after most of the purchases had been completed, neglected to do so, knowing that their claims would be rejected, and evinced a disposition to demand from the Spanish Government the reimbursement of the purchase money they had paid.

Things remained in this situation until negotiations were opened, in the year 1818, for the cession of the Floridas to the United States. The first formal and written proposition came from Spain, through their minister, in a note enclosed in his letter of the 14th October of that year, preceded, no doubt by

verbal communications. The part of the note immediately bearing on this subject is in the following words: "His Catholic majesty, to give an eminent proof of his generosity, and of the desire which animates him to strengthen the ties of friendship and good understanding with the United States, and to put an end to the differences which now exist between the two Governments, cedes to them, in full property and sovereignty, the provinces of East and West Florida, with all their towns and forts, such as they were ceded by Britain in 1783, and with the limits which designated them in the treaty of limits and navigation concluded between Spain and the United States on the 27th of October, 1795. *The donations or sales of land made by the Government of his majesty, or by legal authority, until this time, are, nevertheless, to be recognized as valid.*"

To this part of the proposition, Mr. Adams answers, in his letter of 31st October, 1818: "Neither can the United States recognize as valid ALL the grants of land UNTIL THIS TIME, and at the same time renounce all their claims and those of their citizens, &c. * * * * * * * *. It is well known to you, sir, that notice has been given by our minister in Spain to your Government, that all the grants of land LATELY alleged to have been made, [alleged to have been lately made] by your Government, *within those territories*, must be cancelled, unless your Government should provide some other adequate fund from which the claims above referred to may be satisfied. From the answers of Don J. PIZARRO to this notice, we have reason to expect that you will be sensible of this necessity, and that *some time must be agreed upon subsequent to which no grant of land*, WITHIN THE TERRITORIES in question, shall be considered as valid."

In the reply of the Spanish minister, he adverts to the sale of the lands "*in the two Floridas, ceded by his Catholic majesty*," as the means by which the United States would be enabled to pay the sums due to their citizens.

When the treaty was nearly concluded, the Chevalier de

Onis was prevented by indisposition from meeting Mr. Adams; and Mr. Hyde de Neuville, then minister of France, seems to have been admitted, informally, as a mediator between the negotiators. In one of his notes on the subject of the confirmation, he uses the following observation, which seems to be addressed to the Chevalier de Onis, in order to explain to him the views of Mr. Adams: "The Secretary of State observed to me, that certainly it could never be the intent of the Federal Government to disturb the individuals in the enjoyment of property acquired legally, or *bona fide;* but that a treaty ought not to be made to cover frauds, and that nothing more could be demanded of the United States than the King could offer; that they put themselves precisely in his place, and that they would fulfil all his engagements, but most certainly it could never be understood that they should do more. The Secretary of State proposes even, if Mr. Onis desire it, that the article shall be inserted in the treaty such as Mr. Onis has proposed, on condition that the explanation above stated" [that all grants not annulled by this convention are valid, to the extent that they are binding on his Catholic majesty,] "shall be given in a note." The article, as proposed by Mr. Onis, to which Mr. Adams is said by Mr. Neuville to have consented with the above modification, is in these terms: "All the grants of land made by his Catholic majesty, or by his authorities, in the *aforesaid territories of the two Floridas*, and others, which his majesty cedes to the United States, shall be confirmed and acknowledged as valid, excepting those grants which may have been made after the 24th day of January, last year, the date of the first proposals which were made for the cession of those provinces, which shall be held null in consideration of the grantees not having complied with the conditions of the cession."

In all this negotiation, not an objection seems to have been raised to the confirmation of all the Spanish *bona fide* grants, excepting only certain extravagant concessions, covering nearly

the whole of the ceded country, made subsequent to the first offer of the cession of the country. The idea of disturbing any such titles is expressly disavowed by Mr. Adams; and the treaty was finally concluded on the 22d February, 1819, in the same spirit that prevailed during the negotiation, the 8th article stipulating in these terms:

"All the grants of land made before the 24th of January, 1818, by his Catholic majesty, or by his lawful authorities, in the said territories ceded by his majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic majesty. But the owners in possession of such lands, who, by reason of the recent circumstances of the Spanish nation and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the terms limited in the same, respectively, from the date of this treaty; in default of which, the said grants shall be null and void. All grants made since the said 24th of January, 1818, when the first proposal, on the part of his Catholic majesty, for the cession of the Floridas, was made, are hereby declared, and agreed to be null and void."

Subsequent, however, to the signature of the treaty, doubts rose whether the large grants, intended to be cancelled, had really been executed before or after the date fixed by the treaty, (the 24th January, 1818.) This led to a warm correspondence between the agents of the two Governments; during the whole of which not a doubt respecting the operation of the treaty, as confirming all the grants prior to 1818, is raised. And finally, the treaty is ratified with an explanatory article, by which the date in the 8th article is stated to be one fixed "for the *confirmation of the grants of lands* made by the King in the Floridas," excepting specially the large grants.

From these statements, the House of Representatives will be the better able to decide on the true intent of the 8th

article, so far as it relates to the concessions or grants of land mentioned and described in their resolution. These were all long anterior to the date fixed by the article, (the 24th January, 1818 ;) they were completed in their form, made by the proper officer, and for a valuable consideration. The lands lie in that territory which, when in the possession of Spain, was by them called West Florida, and are situated to the east of the river Mississippi. They came, therefore, in every point, within the stipulations of the 8th article, that they "shall be ratified and confirmed to the same extent that the said grants would be valid if the territories had remained under the dominion of his Catholic majesty."

Two objections seem to have been raised against this construction by the Supreme Court, in a cause in which the validity of one of these concessions was brought in question. In that case, the principal ground of decision against the confirmation was drawn from the language of the article, which declares that the concessions *shall be* ratified and confirmed ; which the court say is an act not done by the treaty itself, but made obligatory upon another branch of the Government to do, which branch is the legislature, not the judiciary ; that the legislature had not yet performed this obligation, created by the treaty ; and that until it should be done, the court could not declare the treaty to be valid, inasmuch as the sales were made subsequent to the date of the treaty of St. Ildefonso, and, therefore, void, unless they were confirmed by the treaty of 1819. But they add, if the language of the article had been different, if the treaty had declared by words, *in presente*, that the grants *are* confirmed, then the treaty would have been a law obligatory on the court, and, by its paramount force, would have operated a repeal of the 14th section of the act of 1804, above quoted and referred to, and have induced a different decision.

If this part of the decision shall be found to be based on just principles, then there is a clear obligation upon the legis-

lature to pass a law confirming those grants, and repeal the law of 1804, which prevented their confirmation by the commissioners before the treaty.

In a late case decided in the Supreme Court, reference is made to the language used in the Spanish version of the 8th article, to which their attention was not drawn, in the case of Foster and Elam *vs.* Neilson. They there, with great strength of reasoning, demonstrate that the language of the 8th article in the Spanish original is that which is used by the party who grants, and contains, in his own words, the condition on which he cedes—that, therefore, this language must govern; and, as words expressing a present confirmation of the grants are used, not a future obligation on the other party to confirm them, that the concessions made before the 24th January, 1818, in the language of the article, "quedan," *remained confirmed and ratified*, and that, therefore, no act of legislation was necessary, but that the prior concessions were, *ipso facto*, confirmed. This part of the decision is important, and it is, therefore, given in the words of the court:

"It became, then, all important to ascertain what was granted by what was excepted. The King of Spain was the grantor; the treaty was his deed; the exception was made by him; and its nature and effect depended on his intention, expressed by his words in reference to the thing granted, and the thing refused, and excepted in and by the grant. The Spanish version was in his words, and expressed his intention; and though the American version showed the intention of this Government to be different, we cannot adopt it as the rule by which to decide what was granted, what excepted, and what reserved; the rules of law are too clear to be mistaken, and to imperative to be disregarded by this court. We must be governed by the clearly expressed and manifest intention of the *grantor*, and not the *grantee in private*, *a fortiori*, in *public grants*. That we might not be mistaken in the intention or in the true meaning of Spanish words, two dictionaries

article, so far as it relates to the concessions or grants of land mentioned and described in their resolution. These were all long anterior to the date fixed by the article, (the 24th January, 1818 ;) they were completed in their form, made by the proper officer, and for a valuable consideration. The lands lie in that territory which, when in the possession of Spain, was by them called West Florida, and are situated to the east of the river Mississippi. They came, therefore, in every point, within the stipulations of the 8th article, that they "shall be ratified and confirmed to the same extent that the said grants would be valid if the territories had remained under the dominion of his Catholic majesty."

Two objections seem to have been raised against this construction by the Supreme Court, in a cause in which the validity of one of these concessions was brought in question. In that case, the principal ground of decision against the confirmation was drawn from the language of the article, which declares that the concessions *shall be* ratified and confirmed ; which the court say is an act not done by the treaty itself, but made obligatory upon another branch of the Government to do, which branch is the legislature, not the judiciary ; that the legislature had not yet performed this obligation, created by the treaty ; and that until it should be done, the court could not declare the treaty to be valid, inasmuch as the sales were made subsequent to the date of the treaty of St. Ildefonso, and, therefore, void, unless they were confirmed by the treaty of 1819. But they add, if the language of the article had been different, if the treaty had declared by words, *in presente*, that the grants *are* confirmed, then the treaty would have been a law obligatory on the court, and, by its paramount force, would have operated a repeal of the 14th section of the act of 1804, above quoted and referred to, and have induced a different decision.

If this part of the decision shall be found to be based on just principles, then there is a clear obligation upon the legis-

lature to pass a law confirming those grants, and repeal the law of 1804, which prevented their confirmation by the commissioners before the treaty.

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were consulted, one of them printed in Madrid; and two translations were made of the 8th article, each by competent judges of Spanish, and both agreeing with each other, and the translation of each agreeing with the definition of the dictionaries. 'Quedaran,' in Spanish, correctly translated, means 'shall remain;' the verb '*quedar*,' in French, '*rester*;' Latin, '*manere*,' '*remanere*;' and English, '*remain*,' in the present tense. In the English original, the words are 'shall be," words in the future. The difference is all important as to all Spanish grants. If the words of the treaty were, that all the grants of land 'shall remain confirmed,' then the United States, by accepting the cession, could assert no claim to these lands thus expressly excepted. The proprietors could bring suits to recover them without any action of Congress, and any question arising would be purely a judicial one. 'Shall be ratified,' makes it necessary that there should be a law ratifying them, or authorizing a suit to be brought, otherwise the question would be a political one, not cognizable by this court, as was decided in Foster and Elam *vs.* Neilson.

"But, aside from this consideration, we find the words used in the Spanish sense as to the grants made after the 24th January, 1818, which are, by the same article in English, '*hereby declared, and agreed to be, null and void.*' The ratification is in Spanish and English. The Spanish words in the Spanish version are '*quedado*' and '*quedan*' in reference to the annulled grants; the English are, '*have remained*,' '*do remain.*' The principles of justice, and the rules of both law and equity, are too obvious not to require that, in deciding on the effect and legal operation of this article of the treaty by the declared and manifested intention of the King, the meaning of Spanish words should be the same in confirming as in annulling grants. A regard to the honor and justice of a great republic alike forbids the imputation of a desire that its legislation should be so construed, and its law so administered, that the same word should refer to the future as to confirming,

and to the present in annulling grants in the same article of the same treaty.

"For these reasons, and in this connection, we consider that the grants were confirmed and annulled, respectively, simultaneously with the ratification and confirmation of the treaty; and that, when the territory was ceded, the United States had no right in any of the lands embraced in the confirmed grants."

Had the decision stopped here, the undersigned would have been of opinion that the case was open for relief to the persons claiming under the grants described in the resolution which has been referred to him. But after this explicit declaration that the Spanish version is to govern; that, under it, the early grants are, *ipso facto*, by the treaty confirmed, and that no further legislation is required; the court, "to avoid (as it says) all possible misapprehension," declare that they give validity to the grant which they were then considering by virtue of laws which empowered them "*to decide according to the stipulation of any treaty;*" but that, should they be called on to decide on the validity of a title acquired by any Spanish grant not embraced by these laws, they would feel bound to follow the course pursued in Foster and Elam *vs.* Neilson, in relation to the stipulation in the 8th article of the Florida treaty—"*that the legislature must execute the contract before it can become a rule for this court.*"

This conclusion, so contrary to that which the undersigned would have drawn from the premises, has continued the difficulty which he had hitherto found, to answer what he considers the just complaint of the Spanish Government in the letters which, by the resolution of the House, he has been directed to report. Convinced in his own mind that the claims which were urged by the minister of Spain were well founded, he was in hopes, first, that the legislature, by passing a law to do that which the court had declared, in the case of Foster and Elam *vs.* Neilson, to be an obligation created by the

treaty upon the legislative, not the judiciary, branch of the Government, would have enabled him to answer the Spanish minister that justice had been done to the claimants; and when, by the failure of their petition, presented to Congress for that purpose, he lost that hope, he encouraged the one that has now equally proved vain, that the discovery which he made and pointed out, of a difference between the Spanish and English version of the treaty, would have induced the court to decide that their opinion in the case of Foster and Elam *vs.* Neilson was erroneous, as being based only on the English version. They did, as has been shown, most explicitly decide that that version should govern; that it imports a present confirmation, not a promise to confirm in future. But yet, as they give formal notice that they will persevere in a decision given expressly on the assumption that the English version is to govern, the undersigned is bound to believe that they have been governed by some good reasons which have not occured to him from the view, probably an erroneous one, he has taken of the case. However this may be, the declaration is explicit, and imposes on the undersigned the necessity of a strong appeal to the legislature to relieve him, should they deem his reasoning correct, from the embarrassment he is under in making a proper reply to the claim of the minister of Spain in behalf of his Government. While the suits of the grantees were pending, his answer was easy: "The judiciary will decide, and their decision will be satisfactory, because it will be just. If they decide against the claim, you must submit, because they are the proper judges of the legal right. If they allow the claim, it is all you ask." But they have decided, not against the claim, nor yet have they allowed it; but, while they acknowledge that the treaty intended to protect the right of the claimants, they say it created an obligation on the legislature to do a preliminary act, which act they have not done. Following this out, it will at once be seen that the hard task would be imposed on the Secretary of State of saying to a foreign

minister, my Government has, by treaty, engaged to do an act of justice, to the grantees of your sovereign, which they have hitherto refused to perform, although a co-ordinate branch has acknowledged the obligation by a solemn decision. It can scarcely be alleged, as a sufficient answer to this, that the legislature substantially fulfilled this obligation by the appointment of a board of commissioners to decide on the validity of the Spanish grants, and to report for confirmation such as they deemed valid: first, because the commissioners could confirm no grant exceeding six hundred and forty acres; but, conclusively, because they were expressly bound by law not to confirm any of them, the law of 1804 expressly inhibiting the confirmation of any grant made subsequent to the treaty of St. Ildefonso. But these grants were all made two and three years subsequent to that treaty, and were rejected on that ground, as appears by the certificates of the commissioners of the land offices, hereunto annexed.

It has also, sometimes, and by some of the judges, in their opinions, been argued that the lands west of the Perdido having been decided by the Government of the United States to be included in the purchase of Louisiana, the stipulations of the treaty of 1819 could not apply to them, and that the grants agreed to be confirmed, by the 8th article of that treaty, were such only as were made in East Florida, and that part of West Florida which lies east of the Perdido; and they reason thus: "The 8th article confirms the grants of land in the 'territories ceded by his Majesty to the United States.' What lands were ceded? For this we must look to the 2d article, where we find that *his Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida*. Now, the territories to the west of the Perdido did not belong to him: they had, before that, been incorporated into the Union under the Louisiana treaty. Therefore, the grants made in that region

cannot come within the purview of the 8th article, which contemplates only the territories belonging to the king of Spain."

The error of this reasoning consists in discarding that rule of construing an agreement, which directs that the intent of the parties is to govern, and that this intent is to be sought as well in the avowed object of the agreement, as in the language used to carry it into effect; and that, for this purpose, such construction of doubtful words should be adopted as will reconcile them where they apparently differ from each other.

The object of this treaty was, as is expressed in the preamble, "to consolidate, on a permanent basis, the friendship and good correspondence which happily prevail between the two parties, and to settle and terminate all their differences and pretensions by a treaty," &c.

Now, what were those differences? Spain, when she executed the treaty for ceding Louisiana, insisted that, except the island of New Orleans, no part of it lay to the east of the Mississippi; that all the rest of her dominions in that quarter were included in the provinces of East and West Florida. She kept possesion of them for some years after the country was ceded to the United States, when they were wrested from her by force. During the early part of that period, she made the sales and concessions now in question, and ever since, protested against the occupation by the United States. One of the differences to be settled was, then, this very one of the right to that part of West Florida which lies west of the Perdido. How was this to be effected? Precisely in the way that was devised by our able negotiator, Mr. Adams, by using such language as would end the dispute, without the mortifying acknowledgment, by either party, that it had been wrong. We claimed that Louisiana extended eastward to the Perdido; the Spaniards, that, with the exception of New-Orleans, it was bounded by the Mississippi. To the country east of the Perdido we had no claim; but Spain, for a proper consideration,

agrees to cede it to us. Now, if the 2d and 8th articles relate solely to the territories purchased by that treaty, what would have been the description? Certainly, different from that actually used. The Perdido, and not the Mississippi, would have been assumed as the western boundary. But, although this would have designated the territory which, according to the argument, was all that is intended by the two articles, it would have left undetermined one of the principal causes of dispute. How was this to be avoided? By taking the Mississippi as the western boundary, and thus including in the cession all the disputed territory. It cannot be doubted that this was one of the great objects of the treaty; but whatever may be our opinions on this point, it will be conceded that, to give effect to this intent, the written language of the treaty must be such as will justify it.

Let us examine it with that view:

"His Catholic majesty cedes to the United States all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida." Here are two designations of the territories ceded: *all the territories east of the Mississippi which belong to him;* and those territories are further discribed, as those *known by the name of East and West Florida.* Now, it never was doubted that the designation of West Florida, while that country was possessed by Great Britain, and after it was ceded to Spain, was applied to the territory bounded by the Mississippi. The whole of the description, then, will apply to the lands in question, as it was understood by one of the parties; and as this description was given in the very act by which the whole of the Spanish claim was relinquished to the United States, it was a matter of little moment to this latter power what words were used by Spain to avoid a confession which, in a compromise, they could never be called on to make, that their previous pretentions were unjust, provided the same precautionary language were observed with respect to the

United States. The treaty was a compromise. Spain undoubtedly had a claim, founded on at least a color of right, to the territory between the Perdido and the Mississippi—a claim they had always asserted. In the delivering possession of Louisiana, to which we contended this was an appendage, they refused to deliver this territory. Our commissioners did not demand it; nor did those of France, when the province was transferred. The Crown of Spain remained in peaceable possession until an insurrection deprived them of the possession of a part, and an invasion by our troops some time after, of the rest. Spain had made these sales and grants to *bona fide* purchasers, for a valuable consideration, while they were in this peaceable possession. How, therefore, could Spain be supposed to consent to any arrangement that should formally acknowledge that she had unjustly refused to deliver possession of what she had ceded, and had sold lands to which she had no title; nor could the United States with propriety acknowledge that they had unjustly taken and retained the possession. The cession of the territories east of the Perdido afforded an opportunity of using language that would effect the purpose of both Powers, without committing the dignity of either. By describing the country ceded as lying to the east of the Mississippi, and known by the name of East and West Florida, it included as well that part of West Florida formerly in dispute, as the territory then first ceded by that treaty; and by agreeing that the *bona fide* concessions in the territory ceded should be confirmed to the possessors, the United States did an act of justice which equity would seem to have demanded, even had there been no stipulation. For, let it always be remembered, that Spain was the sovereign *de facto* of the disputed territory at the time the grants in question were made, and continued in the undisturbed possession of it for many years after.

It seems also worthy of remark, that these grants having been made for a pecuniary consideration paid into the treasury

of Spain, not only justice to her grantees, but a strong actual interest, must have induced her, in any treaty, to have stipulated for a confirmation of these grants, the annulling of which would have created a just claim for a large amount upon the treasury of that country.

It must be clear, therefore, from the language of the negotiators, both before and after the signature of the treaty, which has been quoted in the beginning of this report, corrobated by what was called for both by the interest and the honor of Spain, that the confirmation of these grants was an object of high importance to that Power, and that she thought this object was attained by the treaty. If, therefore, the language is at all doubtful, according to the just reascning of the Supreme Court, hereinbefore quoted, the words of the condition on which the cession was made, must be construed in the sense in which it was understood by Spain; and honor and justice require that the condition should be fulfilled.

If the opinion of the undersigned had been called for before the decision of the Supreme Court, in the case of Foster and Elam *vs.* Neilson, he would have said that the words, "shall be ratified and confirmed," even taking the English version for the text, as used in the treaty, import an actual, not a future confirmation; because, when such words are used by the body having the power to do the act, and the words are not coupled with any condition or limitation as to time, they then operate *in presenti*, and take effect at once. Here, there is no doubt that the President and Senate had a right by treaty to confirm the grants; the Supreme Court have said so, when they declare, that if the words had been *are confirmed*, they would have repealed the law of 1804, which annulled those grants. But since that decision, and the other, in the case of Arredondo, the undersigned is bound to consider the 8th article in the treaty as an obligation upon the faith of the country, which can only be fulfilled by an act confirming the *bona fide* grants in question.

It may not be improper to add, as coming within the spirit of the resolution, that, on many of the tracts in question, settlements were made subsequent to the dates of the grants, and that the settlers have received donations of their lands from the United States. The confirmation of the grants, therefore, to the original grantees would create great distress and confusion, by disturbing the possessions of the settlers; to avoid which, the grantees, it is understood, would willingly agree to relinquish their claim to all such settlements as may have been made on their tracts, respectively, on receiving a confirmation of their title to the residue, and an equivalent in lands of the United States, in the State of Louisiana, for the lands of which they may have been deprived by the confirmation of settlement rights.

The letter of Mr. Tacon, the minister of Spain, dated the 24th of October, 1829, annexed to this report, will show to the House of Representatives the light in which the question of these grants is viewed by the Spanish Government. The list to which that letter refers was, before the undersigned came into the department, transmitted to an agent who was then dispatched to Cuba to obtain the originals, and cannot now be furnished; but the annexed list of the claims filed before the commissioners, for the land office west of Pearl river, it is supposed will give an idea of the quantity of land that may be claimed under these grants. There were also several Spanish grants and confirmations made after 1803, east of Pearl river and west of the Perdido, the number of which cannot be asssertained, but they are not supposed to be considerable. No formal answer having been given by the late Secretary of State to this letter of the Spanish minister, application has frequently been renewed to the undersigned, who, in an informal manner, has urged the necessity of delay until the Legislature should definitely have acted on the case. For this delay the pendency of the suits above mentioned, and of the application of the claimants to Congress, afforded a motive that seems to have

been deemed satisfactory; but now the undersigned cannot much longer avoid giving an official answer, the character whereof must depend on the proceedings of Congress, which he has no doubt will be consistent with justice, and a faithful regard to national engagements.

The undersigned, Secretary of State, most respectfully offers to the consideration of the House, the draft of a bill which could effect the purpose of satisfying the claimants under the Spanish grants, and quieting the possessions of those who may hold under donations, confirmations, or sales, made by the United States, of lands comprehended in the said Spanish grants.

All which is respectfully submitted, with the expression of a decided opinion, that the 8th article of the treaty between the United States and Spain, if it did not confirm the grants and sales in question, at least created an express obligation upon the former power to confirm them; that this obligation has not been fulfilled; and that its performance ought no longer to be delayed. The scrupulous regard we have hitherto paid to our engagements with foreign Powers, has not only established our character for fidelity and honor, but is indispensable when we wish to enforce our claims upon other nations. To suffer it to be sullied by a reasonable doubt, would be a serious injury at all times, and, in the present instance, would operate injuriously on the negotiations in which the Executive is now engaged to procure indemnity for injuries that have been inflicted on our commerce.

EDWARD LIVINGSTON.

The titles to which the decisions we have hitherto mentioned and the report of Mr. Livingston refer, are all sales made in or after 1803 by the Spanish Intendant, or financial officer, within the limits of what was formerly the part of the province of West Florida lying west of the Perdido river.

These titles were sales made for money, preceded by regular surveys, and matured into perfect titles of ownership, without conditions of occupancy, cultivation, or any other requirements whatever.

After the most clearly expressed views of Chief Justice Marshall, and after the emphatically impressive official communication of the eminent statesman and jurist whom we have just quoted, the holders of such titles had good reasons to expect that they would be respected. But however frequently this court has declared, arguendo, that a complete title, emanating from the Government, to lands acquired by the Louisiana purchase was valid without any further confirmation by the United States, which is also clearly the meaning of the fourth section of the act of Congress of March 2, 1805, the first act passed for ascertaining and adjusting land titles in Louisiana; still this obvious rule of justice has virtually and practically been set aside by the General Land Office, which formally refuses to recognize any title whatever that has not been expressly confirmed by the operation of an act of Congress. It therefore became necessary to seek a further judicial sanction of these titles. The Spanish ministers accredited to the United States were urging upon the Secretaries of State the justice and propriety of setting this matter at rest, as it reflected upon the honor of Spain, by imputing to her to have sold territory to which she had no right, and it was particularly pressed upon Mr. Van Buren, Mr. Livingston's predecessor as Secretary of State, by a letter from Mr. Francisco Tacon, then the Spanish minister in the United States, dated October 24, 1829, (5 Pub. Lands, 632,) a copy of which accompanies Mr. Livingston's communication to Congress. In this letter Mr. Tacon speaks of the case of Colonel Manuel Garcia, and Mr. Livingston's communication not having been acted upon by Congress, Garcia brought suit in the district court of the United States, at New Orleans, for the confirmation of his claim.

The decision of that case (12 Pet. Rep. 511,) shows that the expectations that had been engendered by the circumstances we have been relating, were doomed to be disappointed. In the last-mentioned case, the court, while adhering to the interpretation of the treaty of 1819, as established in Percheman's case, quotes from the case of Foster and Elam *vs.* Neilson, as follows: "If those departments which are entrusted with the foreign intercourse of the nation, which assert and maintain its interests against foreign Powers, have unequivocally asserted its rights of dominion over a country of which it is in possession, and which it claims under a treaty; if the Legislature has acted on the construction thus asserted, it is not in its own courts that this construction is to be denied. A question like this, respecting boundaries of nations is, as has been truly said, more a political than a legal question; and in its discussion, the courts of every country must respect the pronounced will of the Legislature."

Subsequently Congress passed an act on the 17th of June, 1844, entitled "An act to provide for the adjustment of land claims within the States of Missouri, Arkansas, and Louisiana, and in those parts of the States of Mississippi and Alabama south of the thirty-first degree of north latitude and between the Mississippi and Perdido rivers, (5 Stat. at Large, 676,) by which the provisions of the expired act of May 26, 1824, entitled "An act to enable claimants to land within the State of Missouri and Territory of Arkansas," to institute proceedings to try the validity of their claims, were extended for five years to the States and Territories named in the heading of said act of June 17, 1844. The very wording of the title of this act shows that it was intended to provide for the settlement of the land claims arising from the sales made by the Spanish Intendant of West Florida, in the territory west of the Perdido river, the sovereignty of which had so long been a subject of negotiation between the Governments of the United States and of Spain. But this act was drawn up, like so many others

relating to the settlement of land claims derived from the Louisiana purchase, by persons acquainted neither with the usages and practice of the former Governments of these countries, nor with the decisions of the Supreme Court of the United States relating to them. And this is so true of this particular act, that it failed to extend the relief intended by it to nearly every claim that was intended to be benefitted by it, and certainly to every claim "south of the thirty-first degree of latitude, and between the Mississippi and Perdido rivers."

Not anticipating such an untoward result, the owners of the present claim, the widow and children of John Lynd, the original purchaser from the Spanish Government, instituted on the 16th of June, 1846, in the district court of the eastern district of Louisiana, a suit for the confirmation of the land claim which is now again the subject of the present suit, (Record, p. 9.) This suit was decided in their favor by the district court, (Record, p. 52,) but on appeal to the Supreme Court of the United States, this, and a number of other cases which presented precisely the same species of titles, and which had been decided by the district court in favor of the plaintiffs, were ordered to be dismissed by the Supreme Court of the United States, on the ground that the titles had been made after the treaty of San Ildefonso, of October 1, 1800. (Record, p. 55.) The leading case of this class, and the only one which is reported at length in the reports of the Supreme Court of the United States, is that of the United States *vs.* Reynès, (9 How. 197,) in which the Supreme Court not only adhered to the decision of that court in Garcia *vs.* Lee, (12 Pet. 511,) to the effect that, whereas the political department of the Government had declared that the territory within which the land had been granted by the Spanish authorities was within the limits of the United States, the courts of the United States were precluded from the examination of this political question, but furthermore held that the act of June 17, 1844, gave to the court no authority to investigate the correctness of that

legislative conclusion, or to consider the validity of the acts of the *de facto* Government of the disputed territory, and also that as the said act of Congress of May 26, 1824, (4 Statutes at Large, 52,) which was revised by said act of June 17, 1844, embraced within its operation only inchoate and not complete or perfect titles to land, the title set up by said Reynes being a complete and perfect one, could not be confirmed. (And such is the title set up by the plaintiffs in the present suit.)

It is obvious that the real difficulty which the claimants under these purchases from the *de facto* Spanish Government encountered all along, was the want of jurisdiction of the courts of the United States. These claimants could not apply, with any hopes of success, to the Spanish Government for the reimbursement of the money they had paid for the land which, with ordinary interest, would have greatly exceeded the value of the land, for they would naturally have been met by the opinion of Mr. Livingston, a high official of the American Government, declaring that the sales were perfectly valid, and by the opinion of Chief Justice Marshall, declaring that the treaty of 1819, "pledged the faith of the United States to pass acts which should ratify and confirm them," *i. e.* the titles involved in the present examination, (2 Pet. 314.)

These claimants therefore considered that their only hope was from a sentiment of justice in the Congress of the United States.

And the largest and most active of these claimants was John McDonogh, a native of Baltimore, but an old resident of Louisiana, who claimed 223,333 arpents of land, under such titles as we have described in this brief, and whose claim was bequeathed by him to the cities of Baltimore and New Orleans, as is shown by the records of this court.

Being a man of great perseverance and energy, McDonogh pressed his claims upon the members of Congress of his adopted State, and on the 26th of May, 1858, Senator Benjamin, of Louisiana, then acting as chairman of the committee of

private land claims of the Senate, made a report which will be found on p. 65 of the record. This report does not discuss McDonogh's claim separately, but treats generally of the claims derived from Intendant Morales' sales of lands in what may fitly be designated as the disputed territory so frequently mentioned in this paper. While it may not have behooved Mr. Livingston as an executive officer or the judiciary of the United States, to criticize the action of the Government in a matter of foreign policy, it was within the legitimate province of the legislature, represented by the chairman of one of its committees, to investigate the sources of its official action, and to seek and propose corrections of it, if upon investigation it was found to be unjust to the sovereign citizens of the country, or a departure from the true spirit of an international treaty. And with this opinion of its appropriate duties, the report in question went much farther than Mr. Livingston's report, and indeed much farther them it will be found necessary for this court to go. Still, as the act of Congress of June 22, 1860, upon which we rely in this case, opens for the first time the door to an inquiry as to the powers of the *de facto* Government of the Spanish province of West Florida, and of the honesty and good faith of that Government and of the parties buying land from it, we hope to be permitted to state the substance of this report somewhat more extensively than might perhaps be indispensable for the purposes of this brief. It is indeed impossible to designate the precise limit.

This report is exceedingly able and lucid : it is indeed a most interesting chapter of American history. It contains much more copious quotations from historical sources than Mr. Livingston's report. But Mr. Livingston's report remains unsurpassed as an argument, and we shall therefore quote from Mr. Benjamin's report only a few remarkable passages. Speaking of the titles of John McDonogh (whose claim was then before the committee—and the title of the claimants in the present suit is precisely of the same description) the report says, p.

65: "The titles set forth by the memorialists are unquestionably valid, if, at the date when they were acquired, it was within the power of the Spanish Government to make sales or grants of land within the territory in which the lands claimed are situated; and this *question, it is believed, is now for the first time presented to a decision by Congress*, since the treaty with Spain of the 22d of February, 1819, by which the Floridas were acquired."

The American Government was particularly desirous to secure the outlets of the Mississippi, and of the Mobile, Chattahoochie and other streams of West Florida, (p. 66).

On the 29th of July, 1803, the Secretary of State wrote to Robert R. Livingston, the American Minister at Paris, (p. 69):

"I can only add the wish of the President to learn from you the understanding which prevailed in the negotiations with respect to the boundaries of Louisiana; and more particularly the pretensions and proofs for carrying it to the river Perdido, or for including any lesser portions of West Florida."

On the 18th of February, 1803, Mr. Livingston writes (p. 70): "I have proposed to them [the French Government] the relinquishment of New Orleans and Florida, as far as the river Perdido. The essential fact is that the Floridas are not yet ceded, *i. e.* by Spain and France."

Page 70: "On the 12th of May, 1803, he writes in relation to the colonization of Louisiana, that on his arrival in France it was a favorite project with the First Consul: 'Nor would any of them hear of disposing of it by sale; yet so ignorant were they of the nature of their acquisition, that they never once suspected the Floridas were not included in their treaty, till they were convinced of the contrary by the inquiries they set on foot in consequence of my information.' Comments on these passages would be superfluous. The evidence is irrefragable that the American Minister had not the least idea that in purchasing Louisiana he was acquiring West Florida,

within whose limits are situated the lands claimed by the memorialists."

P. 71. Mr. Madison, in his dispatch to Mr. Pinckney, at Madrid, of July 29, 1803, "opens a fresh negotiation with Spain for the acquisition of the two Floridas with these words: 'You will have learned, doubtless, from Paris, that a treaty has been signed there by which New Orleans and the rest of Louisiana is conveyed to the United States. The Floridas are not included in the treaty, being, it appears, still held by Spain.'"

It appears that the first idea of a claim by our Government to West Florida, as comprised in its purchase of Louisiana, originated with Mr. Livingston's letter of the 20th of May, 1803, in which he says, (p. 72): "The moment I saw the words of the treaty of Madrid, I had no doubt but it included all the country that France posessed by the name of Louisiana previous to their cession to Spain, except what had been conveyed by subsequent treaties.'

On the 2d of August, 1803, Mr. Pinckney, at Madrid, informed Mr. Madison (p. 73), that he "had received official information from Mr. Monroe and Mr. Livingston that Louisiana was ceded, and that they considered the cession as including West Florida."

"The effect of these communications of our Ministers in France, says Mr. Benjamin (p. 73), was speedily apparent, both in the conduct of our negotiations with Spain, and in the action of our Government at home. Instead of pursuing the instructions of the Secretary of State, and seeking to purchase the two Floridas, Mr. Pinckney asserted title to West Florida; and Congress, whilst it passed an act for the establishment of collection districts at New Orleans and Natchez, proceeded cautiously to test the feeling of Spain on the subject by adding a section to the law, authorizing the President, 'whenever he shall deem it expedient, to erect the shores, waters, and inlets of the bay and river Mobile, and of the

other rivers, creeks, inlets, and bays, emptying into the Gulf of Mexico, east of the said river Mobile, and west thereof to the Pascagoula, inclusive, into a separate district." (Act, 24th February, 1804).

"The pretensions of our Minister were firmly and persistently resisted by Spain, whilst great offense was taken at the passage of the act just quoted, and Mr. Jefferson, in his message to Congress of 8th November, 1804, stated the result as follows:

"Soon after the passage of the act of the last session, authorizing the establishment of a district and port of entry on the waters of the Mobile, we learned that its object was misunderstood on the part of Spain. Candid explanations (p. 74,) were immediately given, and assurances that, reserving our claims in that quarter as a subject of discussion and arrangement with Spain, no act was meditated in the mean time inconsisteent with the peace and friendship existing between the two nations."

Both the American and the Spanish Ministers having applied to France to support their respective views, they received a letter from M. Talleyrand, dated the 21st of December, 1804, in which he says:

(P. 74.) "France, in giving up Louisiana to the United States, transferred to them all the rights over that colony she had acquired from Spain. * * * * Now, it was stipulated in her treaty of the year 1800, that the acquisition of Louisiana by France was a retrocession, that is to say, that Spain restored to France what she had received from her in 1762. At that period she had received the territory bounded on the east by the Mississippi, the river Iberville, the lakes Maurepas and Pontchartrain; the same day she ceded to England, by the preliminaries of peace, all the territory to the eastward. Of this Spain had received no part, and could, therefore, give none back to France."

(P. 75.) "These observations, sir, will be sufficient to dispel

every kind of doubt with regard to the extent of the retrocession made by Spain to France."

After making more extracts from Talleyrand's letter the Senate report continues.:

(P. 75.) "The pretensions of Spain thus maintained were never abandoned, nor has there ever been any determination as to their validity. The committee is therefore forced, in the performance of its duty, to express an opinion upon the relative claims of the two countries to this disputed territory."

The report then enters upon an elaborate review of the different treaties that affected the territories embraced in the Louisiana and Florida purchases; shows that Spain acquired the Floridas from Great Britain by a treaty of 1783, and that the "disputed territory" was always known as a part of the province of West Florida, having the Mississippi river for its western boundary. After an interesting discussion, which however is not material for the decision of this case, the report continues, (p. 77): "It appears to your committee, on a careful review of the whole subject, that no candid mind can resist the conclusion that, however justifiable may have been the pretensions of our Government on the score of policy, and as an offset to the unjust encroachments of Spain in other quarters, and to her spoliation of our commerce, the territory of West Florida was not acquired by the cession from France n 1803, but was de jure an appanage of the Spanish Crown. If this conclusion is correct, the titles of the memorialists are perfect, and ought to be confirmed.

"But, whether or not the foregoing views of the committee shall meet the concurrence of the Senate, no doubt exists of the fact that Spain was sovereign *de facto* of the disputed territory at the date of the sales andgrants now under consideration."

This report then goes on to state and discuss the historical reasons why the treaty of San Ildefonso (of October 1, 1800) was so long kept secret, and says in reference to this subject, (p. 78): "The nature of the treaty of San Ildefonso

was such as to make it imperative on the contracting powers to leave Spain as the ostensible owner of Louisiana, as its sovereign *de facto*, and as such to leave her with power to make valid sales of land in the territory east of the Mississippi, even if it were really included in the cession of Louisiana."

The report further relates the incidents of the transfer of Louisiana, and states that (p. 79) Salcedo and Casa-Calvo, the Spanish Commissioners appointed for that purpose, issued on the 18th of May, 1803, their proclamation, in which it was said 'that the limits on both sides of the river Mississippi should continue as they remained by the 5th article of the definitive treaty of peace, concluded at Paris on the 10th of December, 1763; and, accordingly, the settlements from the Bayou Manchac, as far as the lines which separated the domnions of Spain and those of the United States, should remain a part of the monarchy of Spain, and be annexed to the province of West Florida.' No objection was made by the French prefect." * * *

The report then shows (p. 80) several instances where the American Government at least indirectly acknowledged this claim of Spain: how in 1810 a number of the inhabitants of West Florida captured the fort of Baton Rouge, then in the possession of Spain, declared their independence, framed a constitution, and elected Fulivar Skipwith governor, stating in their claration of independence how they had served the king and preserved his territory, and giving their reasons for claiming their independence, and then sent a communication to the President of the United States praying to be annexed. On the receipt of this communication, the President of the United States issued a proclamation in which he declared that the United States had always considered the territory in question as belonging to them, "that the acquiescence of the United States in the temporary continuance of said territory under the authority of Spain was not the result of any distrust of their title" but was occasioned by conciliatory views. The procla-

mation added that the territory "in the hands of the United States will not cease to be the subject of fair and friendly negotiation and adjustment."

The report then proceeds, (p. 80): "Under this state of facts your Committee think it would be a violation of every principle of justice and national law to confiscate titles acquired from Spain by her own subjects, in territory possessed by her *de facto*, with the acquiescense of the United States, and claimed by her as being hers *de jure*. How could it be expected that her own subjects should doubt or question her right to convey the soil under circumstances like those just narrated? No case has ever come before the notice of the Committee which more imperatively demands the application of the principle sanctioned by the law of nations, that private individuals may safely deal with the sovereign *de facto*, and that their rights are not affected by any subsequent determination that the sovereignty *de jure* is in another power."

The report then cites several authorities in support of these principles of international law, and then says, (p. 81): "The Committee therefore conclude that even if the United States had the right to the disputed territory, the grants in question made by the sovereign in possession were valid, and conveyed a perfect title to the grantees."

The report then examines a third ground, "upon which," it says "the memorialists may rest their claims with entire security," (p. 81.) This point is the 8th article of the treaty of February 22, 1819, already so ably commented upon in Mr. Livingston's report. Mr. Benjamin's report, however, gives more in detail the correspondence between the two Commissioners who framed this treaty, J. Q. Adams on the American, and Luis de Onis on the Spanish side. From this review it is evident that the American Commissioner, consistently with the American claims to the disputed territory, at first, (p. 82,) claimed that no grants subsequent to the 11th of August, 1802, should be held valid, and that on the re-

fusal of the Spanish Commissioner to accept this proposition, he receded from it, and in a letter of October 31, 1818, (p. 82,) only insists that the grants of land *lately* alleged to have been made should be declared invalid. On this basis the Commissioners came to an understanding, and the only grants which were excepted from the general provision for the recognition of grants made by Spain, were those which, in the words of Chevalier de Onis, (p. 83,) "were made after the 24th of January of last year," the date when the first proposals were made for the cession of these provinces. Mr. Benjamin's report then reviews the decisions of the Supreme Court of the United States in the cases in which these sales, made by the Spanish authorities in Florida, and the 8th article of the treaty of February 22, 1819, came before it, viz: Foster & Elam *vs.* Neilson (2 Pet. 396,) United States *vs.* Arredondo (6 Pet. 691,) United States *vs.* Percheman (7 Pet. 58,) and United States *vs.* Reynes (9 How. 127,) and says that the position assumed by the Supreme Court, as established in the first, and reaffirmed in the last of the above-mentioned cases (Reynes, 9 How. 127,) is as follows: "Whether by the treaties of San Ildefonso and of Paris, the territory south of the 31st degree of north latitude was ceded to the United States, is a question into which this Court will not now inquire. The legislative and executive departments of the government have determined that the entire territory was so ceded. This Court has solemnly and repeatedly declared that this was a matter peculiarly belonging to the cognizance of those departments, and that the propriety of their determination it was not within the province of the judiciary to contravene or question."

Further on the report says, (p. 85): "It is plain, from the language of the Court in the cases cited, that the judges really thought that Spain was right in the controversy. If they had thought our Government was right, it was very simple and easy to say so. The very excuse given for not deciding the merit shows whence the embarrassment of the Court arose.

ment of Private Land Claims in the States of Florida, Louisiana, and Missouri, and for other purposes" (12 Stat. at Large, 85; Brightley's Dig. 401). And this act contains all that is necessary for the protection of the titles emanating from the *de facto* Government of West Florida, between 1803 and 1809, when the Spaniards lost the possession of that Territory.

The 1st section of this act provides that all persons, &c., claiming lands lying in the States of Florida, Louisiana and Missouri, by virtue of grant, concession, order of survey, permission to settle, or other written evidence of title, emanating from any foreign Government, bearing date prior to the cession to the United States of the territory out of which said States were formed, *or during the period when any such Government claimed sovereignty or had the actual possession of the district or territory in which the lands so claimed are situated*, shall be authorized to make application for the confirmation of their title to the lands so claimed, in the manner following, to wit: "they shall file notices in writing, together with the evidence in support of their claims, before the Commissioners hereinafter designated, within whose district the lands claimed may be situated, together with a brief abstract of the title of the claimant, and copies of the plats of survey thereof, whenever such surveys have been made and are in the possession of the claimant, and accompanied with a sworn statement by the claimant of the land supposed to be covered by his claim, according to the legal divisions and subdivisions of the surveys made by the United States, if the land claimed is included in any surveys so made."

The second section of this act designates the registers and receivers of the different land offices as Commissioners, and defines their duties. By the 3d section these Commissioners are directed to divide the claims so presented into three classes in their report. The claim sued on in this case, as well as the claims heretofore acted upon by the Supreme Court of the United States, in Foster & Elam *vs.* Neilson, 2 Pet.,

Garcia *vs.* Lee, 12 Pet., and United States *vs.* Reynes, 9 Howard, belong to the second class, which in the act is described as follows: "Number two shall contain all claims which, in their opinion, ought to be confirmed, where the lands are claimed under written evidence of title, as above provided in class number one, but where there has been no actual possession and cultivation of the land claimed for a period of at least twenty years prior to the filing of the claim."

Other sections of this act relate to reports to be made by registers and receivers to the General Land Office, and by the latter to Congress, but the section which specially applies to the claims, one of which is now submitted, is section 11, and reads as follows:

"That in any case of such a claim to lands as is hereinbefore, in the first section of this act, mentioned, where the lands claimed have not been in possession of and cultivated by the original claimant or claimants, or those holding title under him or them, for the period of twenty years aforesaid, and when such lands are claimed by complete grant or concession, or order of survey, duly executed, or by other mode of investiture of the title thereto in the original claimant or claimants, by separation thereof from the map of the public domain, either by actual survey or definition of fixed natural and ascertainable boundaries or initial points, courses and distances, by the competent authority prior to the cession to the United States of the territory in which said lands were included, *or where such title was created and perfected during the period while the foreign governments from which it emanated claimed sovereignty over, or had the actual possession of such territory*, the person or persons, his, her, or their heirs, devisees and legal representatives or grantees, so claiming such lands, may, at their option, instead of submitting their claim to the officer or officers hereinbefore mentioned, proceed by petition in any district court of the United States, within whose jurisdiction the lands, or any part of the lands claimed may be, unless

claims referred to in the 8th article of that treaty, shall "*be confirmed or shall remain confirmed.*" The Supreme Court says (6 Pet. 741):

"The difference is all important as to all Spanish grants; if the words of the treaty were that all the grants of land 'shall remain confirmed,' then the United States, by a accepting the cession, could assert no claim to the lands thus expressly excepted. The proprietors could bring suits to recover them without any action of Congress, and any question arising would be purely a judicial one. '*Shall be ratified* makes it necessary that there should be a law ratifying them or *authorizing a suit to be brought*, otherwise the question would be a political one, not cognizable by this Court, as was decided in Foster & Elam *vs.* Neilson.'"

This was the language of the Supreme Court in an important Florida land case, which was perhaps more thoroughly discussed than any other case of that description. The plain meaning of this language of the Supreme Court is, that if a right had been granted by act of Congress to bring suit upon such claims, the courts would have been authorized to consider the political claim as waived by the government, and to decide the case a *ex æquo et bono.*

The act of Congress of June 22, 1860, having thus most distinctly and expressly authorized the courts to take cognizance of grants made by a government *de facto*, we are now brought to consider what effects the acts of a government *de facto* produce upon private individuals dealing with it. This cannot be more tersely expressed than in the language of the report of ex-Senator Benjamin, (p. 80 of the record,) that private individuals may safely deal with the sovereign *de facto*, and that their rights are not affected by any subsequent determination that the government *de jure* is in another power.

And in support of this view the report adduces the following authorities :

"Chancellor Kent says : 'The national character of the place agreed to be surrendered by treaty continues as it was under the character of the ceding country, until it be expressly transferred. Full sovereignty cannot be held to have passed by the mere words of the treaty without actual delivery. To complete the right of property, the right to the thing and the possession of the thing must be united. This is a necessary principle in the law of property in all systems of jurisprudence.' (1 Kent, 177.)

"In treating of this very disputed territory, the Supreme Court of the United States said, in De la Croix *vs.* Chamberlain, (12 Wheaton, 600 :) 'The United States have never, as far as we can discover, distinguished between the concessions of land made by the Spanish authorities whilst Spain was in the actual possession of it, and concessions of a similar character made by Spain within the acknowledged limits.'

"In Rhode Island *vs.* Massachasetts, (12 Peters, 749,) the same court says : 'Grants by a government *de facto* of parts of a disputed territory in its possession are valid against the State which had the right.' "

But, as the courts of the United States have now, (as is not inaptly said by Mr. Commissioner Wilson,) for the first time, the right to consider the validity of the acts of the government *de facto*, we proceed to submit the proof of how the acts of other governments *de facto* were viewed in their effects upon private individuals.

That the grants made by the government *de facto* of West Florida were not to be considered as nullities is plainly shown by the act of Congress of June 22, 1860, which we have quoted, and particularly by the 11th section of that act, which requires the court to decide according to the principles established by said act, and as

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"equity and justice and the principles aforesaid may require."

This legislative provision therefore relieves the courts of the United States from the necessity of considering the legislative decision concerning the status of the disputed territory as a political question, and refers the issue to the law of nations. This was an honorable but tardy act of justice. We are thus justified in consulting the modern international law of Europe on this subject.

We need not quote Grotius and Puffendorf, the founders of the modern law of nations, but we beg leave to introduce much more recent instances of how a government *de facto*, and its acts upon private individuals, are considered at this time, particularly in the case of sales of a portion of the public domain by the government *de facto*. These questions are treated incidentally by American writers on international law, (Dana's Wheaton, pp. 21, 31, and 32; Halleck, pp. 72, 76;) but it is only in Europe that they were thoroughly discussed and most extensively applied in very numerous and most important cases. The conquests of the French under Napoleon caused many countries to change rulers, and after Napoleon's downfall the former sovereigns were generally reinstated. The new form of government of the conquered countries was a *de facto* government, as defined by this Court in Thorington *vs.* Smith, 8 Wal. 8, for it had "expelled the regular authorities from their customary seats and functions, and had established itself in their place," and had not merely the transitory possession of the country, but claimed all the right, and exercised all the power of the former government. To such a government, while it lasted, allegiance was due, and contracts made with it were lawful. The new government of these conquered countries was sometimes, as in the case of Prussia, Austria, &c., acknowledged by their former sovereigns, and sometimes not, as in

the case of the kings of Sardinia and Naples, and the Pope. In all these countries numerous sales of public property were made by the authorities holding their power from the French conqueror, and on the return of the legitimate sovereign the question arose, whether these sales could be treated as nullities and the property be taken back, *jure postliminii*. And in all those countries, and in all cases, it was ultimately decided that the purchasers of such property must be maintained in their purchases made in good faith, and such was the decision even in the cases of the restored sovereigns who had always refused to acknowledge the authorities by which they had been temporarily displaced, and consistently denounced them as usurpers.

In Germany this class of cases was very numerous, and received the most thorough examination. We must, therefore, look to German authorities to prove our point. We submit, in the first place, translated extracts from two legal encyclopædias, one by Bluntschli & Brater, in 10 volumes, the other by Rotteck & Welcker, in 12 volumes. The immense energy and activity of the German mind is not less remarkable in the science of jurisprudence than in other sciences. Although in this country and in England the German language is less extensively known in the learned than in the industrial classes, still its study is progressing, and particularly on subjects of international law German authors are frequently consulted. Phillimore's four volumes on international law are indebted for much of their value to German sources.

Bluntschli & Brater's Deutsches Staats-Wörterbuch (German State Lexicon,) Vol. III, p. 169; Title: Domains:*

"Finally let us examine here the question whether the sales of public domains made by a usurper may be an-

* The two works, just mentioned, are in the Library of Congress,

nulled by the legitimate sovereign upon his restoration. This question was of the utmost moment to the purchasers of the domains of the former Kingdom of Westphalia. Publicists have almost unanimously held that in such cases the same principle prevails by which every government is controlled in reference to the justly acquired rights of its subjects. If the intermediary government was not a mere transitory occupation, and if the alienation in question was not repugnant to the then existing constitution, no objection can be made to the validity of the sale. Even when, properly speaking, no succession has taken place in the government of the usurper, the purchaser is yet entitled to the protection of his rights. And we find this principle asserted by the civil law in the *exceptio rei venditæ ac traditæ*.

"So, after the fall of Napoleon, all of the restored princes recognized the alienations of public domain that had been made by him and his creatures—even the Bourbons (Art. 16 of the Treaty of Peace made at Paris in 1814.) The government of the Electorate of Hesse formed, it is true, an exception to this rule, but that was to be expected from the peculiar and now proverbial character of the state of things existing there."

Rotteck & Welcker's Staats-Lexikon, Vol. IV., p. 103.

"It is one of the remarkable features of our times that while in all of the countries whose expelled rulers were, after the fall of Napoleon, restored by the victory of the allied arms, the alienations of domains that had been made in the interval were not only not contested, but their validity expressly ratified and confirmed, in Ger-

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and probably in no other library in this city. In order to enable the official and unofficial reader of these pages to ascertain and test the correctness of our translations, we annex the German text of these two extracts as Appendix A and B.

many alone, and there only in three countries that had formed part of the dissolved kingdom of Westphalia, was the legality of the sales that had been made during the Napoleonic period disputed. For not only had Austria, Russia, and Prussia, in their newly acquired territories universally maintained the purchasers of such domains in the possession of their property, but a similar condition was also imposed upon the Bourbons at the time of their restoration. (Art. 16 of the Paris Treaty of Peace of 1814.) Nor were any purchasers of the public lands ever disturbed in their possessions upon the return of the hereditary Stadtholder of Holland, who had been recently adorned with the royal title. So, also, all of the Italian princes, and particularly the kings of the Two Sicilies and of Sardinia, and the Pope, recognized, upon their return to Naples, Turin and Rome, the legality of the sales of public lands effected by the intermediary governments, *although they had never assented to any of the dispositions that had been made of their countries, but had expressly protested against them.*" * * * * * * * Page 104. "*It is worthy of notice that in all Germany not a single writer of reputation has undertaken to dispute, in the least degree, the claims of the purchasers of Westphalian domains.*"

Professor Lieber, in his political ethics, p. 324, states the case of Hesse Cassel still more fully:

"When the elector of Hesse returned, in 1813, to his country, he declared the king of Westphalia, having been a usurper, to have possessed no right of selling the domains, and therefore took possession of them without any restitution of the sums for which they had been purchased. Prussia acknowledged the sales which the same kingdom of Westphalia had made of her domains. The Germanic diet decided against the elector and for the purchasers, and when that prince for years declined to yield to the diet, and all the endeavors, even of Austria, were in vain, the diet ordered the troops of the neighboring mem-

bers of the confederacy to make the elector comply with its decision."

But Phillimore (3 International Law, 708) devotes a whole chapter to the case of the purchasers of the debts and of the domains of Hesse Cassel during the interval between 1807 and 1813, and says that from the importance of the principles involved in its discussion, it has taken its place among the *causes célebres* of Public and International Law. The whole chapter is very interesting, but we shall quote only the concluding paragraph.

"DLXXIV. It is a circumstance well worthy of the attention of the jurist, the statesman, and the historian, that when the Allied Powers of Europe overthrew the dynasty of Napoleon, and restored to the countries which he had subdued their legitimate sovereigns, there were but two or three interior states, and those in Germany, which attempted to deprive proprietors of domains acquired by them under the authority of their *de facto* rulers. Austria, Prussia, Russia, the Bourbon sovereigns in France and Italy, Sardinia, and the Pope, respected the law of reason, of justice, and of nations, and left undisturbed titles so acquired.

"The discreditable exception of these German States arose, no doubt, in some measure from the habit which their rulers still retained of considering the power which they as sovereigns possessed, as equivalent to that of a father over his own children, and of treating the whole country as their patrimony.

"On the other hand, the general acquiescence of restored Sovereigns in the acts of the conquerors or usurpers was more remarkable, because the Peace of Paris (Art. 27) had only protected French subjects in their possessions acquired 'à titre onéreux' in the departments of Belgium, the left bank of the Rhine, and the Alps beyond the limits of old France. Koch actually defends this limitation of the general amnesty on the ground that the allies would otherwise have recognized the usurpation of Napoleon, and his authority to

alienate the domains of countries which he had conquered. Therefore, he says, the allies did not legalize the alienations in Holland, in Transrhenish Provinces, in the Tuscan or Papal States. But Koch's reasoning is both inconsistent and unsound — the former, because, if good at all, it was applicable to *all* the territory acquired by France since the Revolution,— the latter, because it is contrary, as has been attempted to be shown in the preceding pages, to the true principles of International Justice. Moreover, he admits that the restriction of the amnesty in this particular was solely for the purpose of protecting the restored monarch of France against the reclamations and solicitations of proprietors who had been despoiled during the reign of Napoleon.

"But, as has been seen the good sense, if no higher motive, of the restored Sovereigns, gave an almost universal application to the principle, and rejected the limitation."

But the author, who treats this subject with most historical development and illustration, and therefore most satisfactorily and understandingly, is an American, though the work we are referring to has not yet appeared in an English garb. Not long ago Mr. William B. Lawrence, the commentator of Wheaton, published in Germany, but in the French language, two volumes which embrace his notes to Wheaton's works, and a good deal more of kindred matter. We translate copiously from this valuable work, but wishing to bring the narrative part of this brief to a close, we shall print our translation as an appendix at the end of this brief.

We have thus conclusively shown that by the law of nations the purchasers of property of the public domain from a government *de facto* is protected, even if the government *de facto* was established by violence, and was the government of an usurper. How much stronger is not the case of these purchases from the Spanish *de facto* government of the disputed portion of West Florida, which government *de facto*, if not *de jure*, was the continuation of the former uncontested government, and

was never interfered with by the powerful neighboring American commonwealth until that government had withdrawn, in consequence not of an American claim, but of domestic disturbance, and which, by making these sales, and otherwise, held itself out to the world as the sole government *de jure*, and was permitted to do so by the American government, which never gave formal public notice of its claim, though it presented it diplomatically? The good faith of these purchases has never been questioned in any of the cases that came before this Court arising out of such sales.

The merits of this case will particularly become apparent by again considering, in this place, the 8th article of the treaty of February 22, 1819, which is in the following words, as printed in State Papers, vol. V, p. 282: Art 8. "All the grants of land made before the 24th of January, 1818, by his Catholic Majesty, or by his lawful authorities in the said territories ceded by his majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty. But the owners in possession of such lands who, by reason of the recent circumstances of the Spanish nation, and the revolutions in Europe, have been prevented from fulfilling all the conditions of their grants, shall complete them within the term limited in the same, respectively, from the date of the treaty, in default of which the said grants shall be null and void. All grants made since the said 24th of January, 1818, when the first prosposal, on the part of his Catholic Majesty, for the cession of Florida was made, are hereby declared and agreed to be null and void."

This treaty was ratified by the King of Spain only on the 24th of October 1820, (5 State Papers, Pub. Lands, p. 283,) and the King's ratification contained a declaration, obtained at the instance of the American negotiator, in these words: "Desirous at the same time of avoiding any doubt or ambi-

guity concerning the meaning of the 8th article of the said treaty, in respect to the date which is pointed out in it as the period of the confirmation of the grants of lands in the Floridas, made by me or by competent authorities in my royal name, which point of date was fixed in the positive understanding of the three grants of land made in favor of the Duke of Alagon, the Count of Puñonrostro and Don Pedro de Vargas, being annulled by its tenor, I think proper to declare that the said grants have remained, and do remain entirely annulled and invalid * * * under which explicit declaration the said 8th article is to be understood as ratified."

Now, what grants of land were excepted from the general ratification decided on by the 8th article? Plainly only two classes, to wit: 1st, those made after the 24th of January, 1824; 2d, those which had been granted upon certain conditions and under certain requirements, which had not been or would not be complied with within the time mentioned in said article. "Desirous of avoiding any doubt or ambiguity concerning the meaning of the said 8th article," says the King of Spain, he declared what grants had been made after the 24th of January, 1818, and designated them by name. None others, posterior to that date, have ever made their appearance before the world, or could be known or expected to exist. The refernce to conditions in this 8th article has no bearing upon the title derived from the Spanish government in the disputed territory between 1803 and 1806, (the latest titles of this class, the writer of this brief has seen, were of 1806, possibly because the pretensions of the American government, after that period, became known, and deterred purchasers). These titles, issued by the Spanish authorities, were not gratuitous grants, but purchases based upon a formal application, an actual survey of the land, its official appraisement, the payment of the appraised value, and the conveyance of the land to the purchaser, as a common law lawyer would call it, in fee simple, transferring to him all the rights of the sovereign in it,

and enabling him to cultivate it or not, and to do with it whatever he pleased, provided he did not encroach upon the rights of any other party.

This treaty, in its introductory clause, says that the two parties thereto "have determined to settle and terminate all their differences and pretensions by a treaty." What were these conflicting differences and pretensions? This reference to them in the treaty intended to terminate them, certainly shows that they had long occupied the diplomacy of both nations. One of them certainly was that the Spanish authorities had *sold* lands in the disputed district which had been acquired by the United States as part of the Louisiana purchase. If Spain had done so she was guilty of bad faith, her honor was tarnished, and she was responsible to refund to the purchasers the price she had received from them for lands to which she had no title. Can it be believed that Spain would have entered into a treaty ceding an extensive and valuable province, if the treaty had not at the same time removed that attack upon her honor, good faith and pecuniary responsibility? Add to this that this Court has acknowledged in the Arredondo case, (6 Pet.) and in Percheman's case, (7 Pet.) that the meaning of the treaty, as acted upon in the case of Foster & Elam *vs.* Neilson (2 Pet.,) in regard to the grants referred to in the 8th article of the treaty, was not correctly brought to the notice of the Court, and that the correct sense of the treaty was, that said grants *remain confirmed*, and were therefore confirmed *in praesenti* by the treaty itself, and required no other confirmation, but only an ascertainment of boundaries; and we venture to assert unhesitatingly, that the Supreme Court, in the early case of Foster & Elam *vs.* Neilson, would have decided in favor of the validity of the title issued by the Spanish Intendant Morales, if the question of the boundaries of Louisiana, included in it, had not been prejudged by the legislative and executive departments of the government with which the judicial branch of the same government cannot

place itself in opposition unless a question is referred to its independent adjudication.

The question of the validity of these titles, which was heretofore adversely, or rather suspensively decided against them by the United States, is, by anticipation, ruled in their favor by the same decisions under the law as it now stands, which new legislation was probably in no small degree the result of these clear intimations of the Supreme Court.

In Foster & Elam *vs.* Neilson, (2 Pet. 314,) the Supreme Court, commenting on the 8th article of the treaty of February 22, 1819, says: "The words of the article are, that all the grants of land made before the 24th of January, 1818, by his Catholic Majesty, shall be ratified and confirmed to the persons in possession of the lands, to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty." "Do these words act directly on the grants so as to give validity to those not otherwise valid, or do they *pledge the faith of the United States to pass acts which shall ratify and confirm them?*"

And what acts the United States should enact, to comply with this treaty obligation to *redeem their faith*, is more distinctly stated in the opinion of the Supreme Court of the United States in the case of the United States *vs.* Arredondo, 6 Pet., 741 and 742, where the Court, speaking of the two different readings and translations of the treaty, says, (page 741): "The difference is all-important to all Spanish grants; if the words of the treaty were that all the grants of land '*shall remain confirmed*,' then the United States, by accepting the cession, could assert no claim to these lands thus expressly excepted. The proprietors could bring suits to recover them without any action of Congress, and any question arising would be purely a judicial one. '*Shall be ratified*' makes it necessary that there should be a law ratifying them or *authorizing a suit to be brought*, otherwise the question would be a

political one, not cognizable by this Court, as was decided in Foster & Elam *vs.* Neilson."

Here we have the express declaration of the Supreme Court, that the legislative authorization to bring suit upon these claims removes the question from the political ground and makes it one of purely judicial cognizance.

Mr. Livingston, in the beginning of his report, (see p. 7 of this brief,) says: "The Government of the United States having, by several acts, asserted their right to all the territory between the Mississippi and the Perdido, under the treaty of 1803, it would be improper to contradict that asserted right and unnecessary to support it."

Mr. Livingston, as Secretary of State and a member of the executive department, could not use different language, nor place himself in opposition to his own government, nor could the courts of the country do otherwise. But the Committee of the Senate of 1858, as the organ of a branch of the legislative department, was authorized to criticise and even blame preceding legislation, and propose its repeal or amendment, and it did so in unequivocal terms.

By the terms of the act of Congress of 1860, under which this suit was instituted, this Court now possesses unrestricted jurisdiction in this case, and is even directed by its 11th section to decide according to the principles established in this act. This section applies exclusively to the class of claims in the heretofore disputed territory of which the claim of the plaintiffs is one, and the peculiar principles "established by this act" (a term used in no other land act), are the recognition of titles issued by *de facto* governments. The Court may therefore, if they think proper, dispense with the examination or criticism of the legislation under which previous decisions were rendered, and may confirm this claim upon the elevated principles of international law, concurred in by all European nations, as is shown in the numerous authorities printed in this brief.

The only matter which required examination in this case, besides the act of June 22, 1860, was the effect of the treaty of February 22, 1819, upon the title of the plaintiffs. That title is unimpeachable, as were the titles in all the cases heretofore mentioned from 2 Peters, 12 Peters, and 9 Howard. These titles were sales, and were the titles most perfect in form ever issued by the Spanish government in Louisiana, and much more perfect than the usual titles of gratuitous donations or grants. The title is minutely described in the petition, every allegation of which is proved by the most authentic evidence, and principally by the evidence introduced in the suit instituted under the act of June 17, 1844, the record of which is in evidence, and is evidence in this case under the 7th section of the act of Congress of June 22, 1860, and the witnesses examined in that case are all proved to be dead, except one Lambert, and he was re-examined. The original title, signed by the Spanish official invested with the right of granting or selling the public lands, the Intendant Morales, and the original surveys made by Pintado, the government surveyor, were filed, and translations of them are found on pp. 23 to 31 of the record. The title paper shows the application of Lynd, dated the 26th of September, 1803, to be permitted to purchase 40,000 arpents of land then vacant in the Post of Baton Rouge, explains the precedents established in the case of Thomas Urquhart, who had made the first application of this kind, and the action thereon by the royal authorities; the terms of payment proposed by Lynd, and the security offered by him; the survey of the land by the government surveyor; the appraisement of the land by four appraisers, two of whom were appointed by the royal treasury, and two by the applicant; the description of the lands, according to the plans of survey, and the payment of the appraised value into the royal treasury, for 32,025 superficial arpents, which had been surveyed and paid for under this application. And then this title paper declares, (p. 30): "In virtue of the power which I

hold by my office, and in the name of the king, (whom may God preserve,) I grant to the aforesaid Juan Lynd, under the title of sale from the royal treasury, said 32,025 superficial arpents of royal lands in said places, (according to the plans of Vicente Sebastian Pintado, surveyor-general, and annexed and registered with this title;) consequently I impart to him clear and entire ownership of said 32,025 superficial arpents of land, so that as his own property he may possess, dispose, and alienate them at his pleasure, having bought and paid for them to the royal treasury."

This claim was one of the earliest applications for purchasing lands in that district, and anterior to the time when the public could possibly have any knowledge of the supposed discovery of Robert P. Livingston, that this territory was included within the limits of the cession of Louisiana. The proposition to *purchase* lands from the Spanish government being then a new one, that government having before that been in the habit of granting lands gratuitously, occasioned some official correspondence. This title to John Lynd is so complete that it is almost garrulous. It relates the correspondence which had taken place between the Spanish officials on the first application of this kind, made by Thomas Urquhart, and the final order of the king, approving and advising the continuance of such sales.

The requirements of the 1st section of the act of June 22, 1860, were all strictly complied with. Mrs. Rosa Camack, one of the daughters and heirs of John Lynd, files, with an amended petition, an affidavit that the maps filed with the amended petition, and offered in evidence, represent correctly the legal divisions and subdivisions of the surveys made by the United States upon the lands claimed by the petitioners; that such American surveys are designated by black lines on said map, whereas the boundaries of the tracts sold by the Spanish authorities to John Lynd are indicated by red lines; and the correctness of these surveys, both by the American and

Spanish surveyors, and their respective mapping, is further proved by Wm. J. McCulloh, (pp. 61 and 62 of the record), who was for many years United States Surveyor-General in Louisiana, and professes to be, and beyond doubt is perfectly familiar with the public surveys in that State.

So many years had elapsed between the time when these grants were made, and the first act which gave them a status in court, to wit: the act of June 22, 1860, that in the meantime the settlement of Louisiana could not be neglected, and under the then prevailing impression that these claims had to be entirely disregarded, the lands embraced in these claims were disposed of by the United States. When at last, by the act of 1860, a tardy measure of justice was granted to these purchasers from the Spanish government, it could not be the wish of the Government of the United States to disturb the titles or possession of the parties to whom these lands had been granted by the United States, nor could the original claimants or their representatives wish to be confirmed in their titles to lands in the possession of bona fide grantees or purchasers from the United States. Such a grant, or permission to bring numerous suits against bona fide possessors would have been worse than the shirt of Nessus. It was therefore wisely provided that where these lands had been so disposed of by the U. S. that they could neither be surveyed nor located for the benefit of the original purchasers from the Spanish government, these original claimants should receive in lieu thereof an equal portion of the public lands of the United States, which had previously been offered at public sale, but had not found purchasers at the official minimum price of one dollar and a quarter per acre. And as the certificate of the register of the land office of New Orleans, and of the Surveyor-General of the United States for Louisiana, in evidence in this case, show that the lands embraced in the 32,025 superficial arpents sold by the Spanish government to John Lynd have all been dis-

posed of by the United States to bona fide holders, and as the uncontradicted and unquestionable testimony of the late and experienced Surveyor-General of Louisiana (pp. 61 and 62) further shows that these 32,025 arpents are equal in extent to 27,253.75 acres, the District Court of Louisiana was justified in deciding that the plaintiffs are entitled to recover certificates of location, as provided for by the aforesaid act of June 22, 1860, to the extent of twenty-seven thousand two hundred and fifty-three seventy-five hundredths acres of land subject to private entry.

We conclude this brief with the candid belief that the Court will find this one of the easiest cases to decide among those in which the Government of the United States is interested—not because of our own feeble exertions, but thanks to the disinterested and impressive official reports of persons in a more responsible position, and to the creditable though tardy feeling of equity manifested by Congress.

Respectfully submitted,

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Of Counsel for Plaintiffs.

Appendix A.

(Translated on p. 45.)

Bluntſchli & Brater's deutſches Staats-Wörterbuch, Vol. 3, p. 169, v. Domänen.

Endlich ſei hier noch der Rechtsfrage gedacht, ob die von einem Uſurpator ausgeführten Domänenverkäufe von den zurückkehrenden legitimen Fürſten annullirt werden dürfen? Die Frage hat für die Käufer der weiland königlich-weſtphäliſchen Domänen eine verhängnißvolle Bedeutung gehabt. Von der Wiſſenſchaft iſt ſie ziemlich widerſpruchslos dahin entſchieden, daß in dieſem Falle ganz dieſelben Beſtimmungen gelten, welche jede Regierung hinſichtlich der wohlerworbenen Rechte ihrer Unterthanen beſchränken. Wenn die Zwiſchenherrſchaft nicht blos eine vorübergehende Okkupation und die Veräußerung nicht der damaligen Staatsverfaßung entgegen war, ſo läßt ſich gegen die Rechtsgültigkeit des Verkaufs nichts einwenden. Selbſt wenn eine eigentliche Succeſſion in der Herrſchaft des Uſurpators nicht ſtattgefunden, verbleibt dem Käufer der Anſpruch auf Schutz ſeines Rechtes. Bietet doch das Civilrecht für gleiche Verhältniße die exceptio rei venditæ ac traditæ.

Demgemäß haben auch alle nach Napoleons Sturz reſtaurirten Fürſten die von ihm und ſeinen Geſchöpfen vollzogenen Domänenverkäufe anerkannt, ſelbſt die Bourbonen, (Art. 16 des Pariſer Friedens von 1814.) Daß die kurheſſiſche Regierung eine Ausnahme macht, entſpricht dem eigenthümlichen, nun mehr hiſtoriſch gewordenen Charakter des dortigen Regiments.

Appendix B.

(Translated on p. 46.)

Rotteck & Welckers Staats-Lexicon, Vol 4, p. 103.

Es gehört zu den merkwürdigen Erſcheinungen unſerer Zeit, daß, während überall wo verdrängte Regenten durch den Sieg der alliir-

ten Waffen nach dem Sturz Napoleons wieder in ihre Staaten zurückgeführt wurden, die in der Zwischenzeit stattgehabten Domänenveräußerungen allgemein nicht nur völlig unangefochten blieben, sondern auch sogar ausdrücklich von oben herab in ihrer Rechtsbeständigkeit bestätigt wurden, nur mitten in Deutschland und zwar blos in dreier restaurirter Fürsten Ländern, die Bestandtheile des aufgelösten Königreichs Westphalen gewesen waren, die Aufrechthaltung der in der Napoleonischen Periode vorgenommenen Domänenverkäufe bestritten wurde. Denn nicht nur Oestreich, Rußland, und Preußen hatten allenthalben in ihren neuen Erwerbungen die Domänenkäufer im Besitz ihres Eigenthums geschützt, sondern auch den Bourbonen war bei ihrer Restauration diese Verpflichtung auferlegt worden, (Art. 16 des Friedens von Paris vom Jahre 1814.) Und ebensowenig war bei der Rückkehr des mit dem Königstitel geschmückten Erbstadthalters von Holland irgend ein Käufer von Staatsgütern in seinem Besitzthum gestört worden. Gleichermaßen hatten alle italienische Fürsten, namentlich die Könige beider Sicilien und von Sardinien, sowie der Pabst, nachdem sie in Neapel, Turin und Rom wieder eingezogen waren, obgleich sie niemals in eine Disposition über ihre Staaten eingewilligt, diesen vielmehr widersprachen, die Rechtsgültigkeit der unter den Zwischenregierungen geschehenen Domänenveräußerungen anerkannt. * * * "

Bemerkungswerth erscheint, das in ganz Deutschland kein einziger nahmhafter Schriftsteller aufgetreten ist um auch nur im Entferntesten die Ansprüche der westphälischen Domänenkäufer zu bestreiten.

Appendix C.

Commentaire sur les Eléments du Droit International, &c., de Henry Wheaton, par William Beach Lawrence, Vol. I, pp. 215, 216, and 217:

"In the treaty of December 2, 1813, by which the Elector of Hesse gave his adhesion to the alliance against Napoleon, the sales of Hessian domains made by the Grand Duke of Franckfort are declared null and void. Still, the Elector

stipulated to refund the amount paid by purchasers in good faith, that amount to be ascertained by a regular liquidation.

"The purchasers of the domains of Fulda and Hanau, bought back by the Grand Duke from the Emperor Napoleon, according to the convention of December 28, 1811, and resold, with certain reservations, by the Grand Duke to a society of private individuals, presented in October, 1814, a memorial to the Congress of Vienna asserting their rights, and that led to the insertion of article XII in the final act of June 9th, 1815. According to that article a commission was to be named to do justice to these claims. The principle was there established that 'if the sale of those lands was not ratified, the amounts already paid should be refunded to the purchasers, who should not be obliged to relinquish their possession until such restitution should have had complete and entire effect.'

"King Louis XVIII, in the celebrated declaration of Saint-Ouen, of May 2, 1814, which was adopted afterwards as the preamble to the constitutional charter, promised 'that the sale of the national domains should be irrevocable, and the public debt maintained.' In 1825, 30 millions of 3 per cent. *rentes*, representing a capital of one thousand million francs, were created to be awarded to the former proprietors of the lands confiscated and sold for the benefit of the State by virtue of the laws concerning emigrants, and condemned and transported persons.

"By the treaty of Paris of May 30, 1814 (art. XXVII.), it was stipulated that the national domains, acquired for value by French subjects in the former departments of Belgium, of the left bank of the Rhine and of the Alps, outside of the ancient limits of France, should be guaranteed to the purchasers.

"The Pope guaranteed to those in possession the acquisitions which they had made of lands called national lands under the French government.

"The King of Sardinia likewise agreed that the national

domains should remain in the hands of the purchasers, except in cases where the purchase was affected, by the terms of the laws governing the subject, with some vice importing nullity.

"Kluber, in speaking of questions arising in connection with the sale of national domains, says: 'These questions were frequently discussed at the time of the changes effected by the conquests of Napoleon and by his fall, in the Kingdoms of France, Spain, Sardinia and Naples, in the States of the Holy See, in the Electorates of Hanover and Hesse, and in the Duchies of Brunswick, Oldenburg, &c.'

"The Department of Justice of Mecklenburg-Schwerin, at Gustrov, referred first to the universities of Breslau and Kiel, and then to another German university, the question of the validity of a release given by the Emperor Napoleon, while he possessed the sovereignty of Hesse-Cassel, for a debt due to the Electorate by a subject of Mecklenburg-Schwerin and secured by the domains of the latter state. The release had been recorded in obedience to an order of the Grand Duke, reciting that Napoleon, having acceded to the sovereignty of Hesse-Cassel, was entitled to the debts due to that State, and ordering the court to record the cancellation of the mortgages given for the debts released by Napoleon. The universities of Breslau and Kiel were of the opinion that the release was good for the sum really paid, but for no more. The third university, to which the matter was appealed, *ad impartiales externos*, maintained that the release was good, whether the debt had been paid or not. This opinion was in harmony with the judgment of the Amphictyons in regard to the debt due by the Thessalians to the Thebans, and which had been released to the former by Alexander the Great after the conquest of Thebes.

"This is what Heffter says: 'Alienations of capital, of securities, and in general of property forming part of the domains of the State, and not of the private domains of the sovereign or his family, effected by an intermediary govern-

ment, are considered binding. Still, as we have said, this point is very much controverted. The courts have rendered many decisions in the sense above indicated, but it must be confessed that there are some decisions of the opposite character. However, it is clear that the sovereign who resumes, after a long interruption, the exercise of his ancient rights, is bound to answer for the engagements contracted by the intermediary government which followed him, and, furthermore, that such government, after the complete dissolution of the old state, could rightfully occupy the possessions of the latter as being vacant and without an owner."

Pages 221, 222 and 223: "The stipulations of the treaties of May 30, 1814, and November 20, 1815, concluded with Louis XVIII, as king of France and recognized as having been the legitimate sovereign for a long time, by which the government of the restoration was charged with the claims of subjects of foreign governments for the acts of the revolutionary governments, demonstrate sufficiently the responsibility of the State itself towards foreigners, whatever changes may take place in its internal affairs.

"If we consider the recognition imposed upon France of the claims of the subjects of the Continental powers and of England (notwithstanding the solemn declarations of the allies that Napoleon was a brigand, and his invasion of France an act of piracy), not as a simple act of international justice, but rather as a pressure exerted by conquest, the American claims cannot be considered in the same light. The Americans, in fact, did not pretend to have conquered France, but based their claims solely upon the solidarity of a country towards foreigners, without regard to the changes in the government. These claims were made for the seizure and confiscation of their vessels and cargoes effected in the time of the Empire. Several of them had been recognized in 1816 as just in principle, even by the Duke of Richelieu, but their liquidation was not effected until the accession of Louis Philippe.

"The 1st article of the convention concluded by Mr. Rives, the American plenipotentiary, on the 4th of July, 1831, declares that 'the French Government, in order to liberate itself completely from all the reclamations preferred against it by citizens of the United States for unlawful seizures, captures, sequestrations, confiscations, or destructions of their vessels, cargoes, or other property, engages to pay a sum of twenty-five millions of francs to the Government of the United States, who shall distribute it among those entitled, in the manner and according to the rules which it shall determine.'

"The convention with France was followed by a similar one, concluded on Oct. 14,1832, by Mr. Nelson, on the part of the United States, with the King of the two Sicilies. An indemnity for claims, which was the object of this treaty, had been sought from the Neapolitan Government of the Restoration in 1816, by means of an extraordinary mission sent to Naples for that purpose. In his instructions to Mr. Pinckney, Mr. Monroe had said: 'The commerce of the United States had been invited by special decrees to enter the Neapolitan ports, and several vessels having gone there, upon the faith of these decrees, with cargoes of great value, they were seized by the government itself and appropriated to the use of the state. No principle is more firmly established than that a nation is responsible for the acts of its government, without a change of authority affecting the engagements contracted by it.

"The preamble of the convention of 1832 gives as the reason why it was concluded, the desire of the King of the Two-Sicilies 'to terminate the reclamations advanced by the United States against his majesty in order that the merchants of the United States may be indemnified for the losses inflicted upon them by Murat by the depredations, seizures, confiscations and destruction of their vessels and cargoes, during the years 1809, 1810, 1811, and 1812.' And the King thereby bound himself, in order to satisfy said reclamations, to pay the sum of 2,115,000 Neapolitan

ducats to the United States, to be distributed among the claimants.

"When we consider that the acts of which the United States complained had been committed at a period when the continental portion of the kingdom, from which King Ferdinand IV had been driven by a French army in 1806, was held by King Joachim, who, himself, was in reality subjected to the authority of a foreign government, and at a time when the legitimate King continued to reign in Sicily, we perceive that this convention constituted the most complete recognition of the principle which establishes the responsibility of every country for the acts of its government *de facto*, whatever may be the title under which it is administered.

"The reclamations arising out of the revolutions which are constantly repeating themselves in the different states of Spanish America, are further illustrations of this rule."